

No. 12849

United States
Court of Appeals
for the Ninth Circuit.

PATTERSON-BALLAGH CORPORATION, a
Corporation, and BYRON JACKSON CO., a
Corporation,

Appellants,

vs.

PERRY M. MOSS and PHOEBE E. MOSS,

Appellees.

Transcript of Record
In Three Volumes
Volume II
(Pages 279 to 516)

Appeal from the United States District Court for the
Southern District of California,
Central Division.

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MRS. PHOEBE MOSS

one of the plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: Phoebe E. Moss. [238]

Direct Examination

By Mr. Joseph F. Westall:

Q. You are the plaintiff in this case, are you not, and are the wife of the nominal plaintiff Perry M. Moss? A. Yes.

Q. When were you married to Mr. Moss?

A. September 21, 1928.

Q. What was that year? A. 1928.

Q. From the time of your marriage and up to the present time, you have lived with Mr. Perry M. Moss, have you not? A. Yes, sir.

Q. What, if anything, did you have to do with the invention of the patent in suit and its exploitation?

A. Well, I kept the records, paid some of the bills and helped him in the garage to lay it together.

Q. And who took care of the financial affairs of the family? A. I do.

Q. Did Mr. Moss, to your knowledge, make any efforts to reduce the invention to practice by actually making and testing a device like that shown in the patent? A. Yes.

Q. Did you keep any records relating to such

(Testimony of Mrs. Phoebe Moss.)

efforts [239] or activities on the part of Mr. Moss?

A. Yes.

Q. I hand you what purports to be an original letter, on the letterhead of the Patterson-Ballagh Corporation, 1900 East 65th Street, Los Angeles, California, dated March 24, 1942, and signed by "J. C. Ballagh, Secretary," and ask that said letter be marked for identification in the record as Plaintiffs' Exhibit 19, and ask you if that is a letter which you handed me during the preparation of the trial of this case.

The Court: Is there any objection to that letter?

Mr. Caughey: No.

The Court: Do you want it marked?

Mr. Joseph F. Westall: Yes; it should be marked for identification first.

The Court: You may have it marked as an exhibit if you are going to offer it in evidence.

Mr. Joseph F. Westall: I will offer it in evidence as the next number, if there is no objection to it.

The Clerk: Plaintiffs' Exhibit 19 in evidence.

A. Yes; I recognize the letter as the one I gave you.

Mr. Joseph F. Westall: I will ask counsel, at the same time, will you stipulate that is the signature of Mr. Ballagh?

Mr. Caughey: Yes.

Mr. Joseph F. Westall: I also offer in evidence the [240] envelope in which the letter just referred

(Testimony of Mrs. Phoebe Moss.)

to, Plaintiffs' Exhibit 19, was enclosed, and ask you if that is the envelope in which the letter came addressed to Mr. Moss. A. It is.

The Court: That may be attached to the letter.

Mr. Joseph F. Westall: That may be attached to the letter as Exhibit 19-A, perhaps?

The Court: We will call it Exhibit 19-A.

Q. (By Mr. Joseph F. Westall): Did you open that letter when it came? A. Yes; I did.

Q. And you have had possession of it during all of the time since that time until you gave it to me? A. Yes, sir.

Q. Were you present at any negotiations between Mr. Moss and the Patterson-Ballagh Corporation relating to a possible sale of the patent in suit or a license under it?

A. No; I was not present at any of the conversations.

Q. You were not present at any of them?

A. No. I went with him to the outside of the building but I didn't go into any conference.

Q. Since the receipt of said letter, Plaintiffs' Exhibit 19, do you know whether or not there have been any negotiations or efforts at settlement?

A. Yes. [241]

Q. Do you know when those negotiations were had?

patent [242] matters. In any event, they are leading questions.

The Court: Let's go to the next.

(Testimony of Mrs. Phoebe Moss.)

Q. (By Mr. Joseph F. Westall): Please state

A. The exact dates I don't know that Mr. Moss was there. There were two times definitely that I do remember but the date I can't give. And then through your conferences with Mr. Caughey.

Q. So my conference has not been directly with them but through Mr. Moss?

A. And through you.

Q. Please state whether or not you were present at any time when, in December, 1936, Mr. Moss was making or causing to be made one of the devices of the Moss patent in suit, for testing by Mr. Andersen.

A. Yes; I was present.

Q. Did you see the actual device that Mr. Moss made, for testing, in November, 1936?

A. Yes.

Mr. Caughey: Pardon me, if your Honor please. I don't like to make objections unnecessarily but these are all leading questions. I think this witness can answer questions, if they are properly framed and give the dates. These are all written out, evidently. This witness, I might say, is well qualified to answer questions because I can establish by evidence that she used to be Mr. Westall's secretary.

Mr. Joseph F. Westall: Oh, no.

Mr. Caughey: At least, she is well versed in whether or not you ever visited Well No. 7-A at Huntington Beach.

A. Yes; I have been there several times.

Q. And did you see the line spooler that has been referred to as having been put in use at Well No.

(Testimony of Mrs. Phoebe Moss.)

7-A at Huntington Beach?

A. Yes; I was there when it was put up.

Q. You saw it put up?

A. Yes, sir; I did.

Q. Did you see it tested? A. Yes, sir.

Q. Did it operate successfully?

A. Yes; to the success of the men on the well. They were very pleased and bought it after one or two operations of the well.

Q. Have you made a careful examination of advertising literature of oil well devices to determine what were being advertised by Patterson-Ballagh at that time, that is, prior to or in November, 1936?

A. I have examined advertisements that they put out from 1934 up to date.

Q. From 1934 up to date? A. Yes. [243]

Q. Can you produce The Oil and Gas Journal dated December 31, 1936, page 126? A. Yes.

Q. If so, please do so. I have photostats of that and I will give one to opposing counsel.

A. December 31, 1936, page 126.

Q. At page 126? A. Page 126.

The Court: Of what book?

A. December 31, 1936.

Q. (By Mr. Joseph F. Westall): Of The Oil and Gas Journal? A. That is right.

The Court: Page what?

A. 126.

The Court: Of The Oil and Gas Journal?

(Testimony of Mrs. Phoebe Moss.)

A. Yes, sir.

Mr. Joseph F. Westall: I have a copy there for the court.

The Clerk: Do you wish me to mark this?

Mr. Joseph F. Westall: I suppose counsel will stipulate, as we have the Journal if he wants to look at it, that the photostat may be received in evidence.

Mr. Caughey: If it can be shown it is material.

Mr. Joseph F. Westall: It is very material. It is the [244] most material evidence in the case that we are putting in right now.

Mr. Caughey: That may be your idea of it, Mr. Westall. I will stipulate, as far as the defendants are concerned, that it is apparently a part of a publication, dated December 31, 1936, of The Oil and Gas Journal. I will make that stipulation.

Mr. Joseph F. Westall. And will you stipulate it is an advertisement of the Patterson-Ballagh Corporation?

Mr. Caughey: Yes.

Mr. Joseph F. Westall: And will you further stipulate that at that time, at the time of this advertisement, you were making and offering for sale the devices referred to?

Mr. Caughey: What do you mean by "the devices referred to"?

Mr. Joseph F. Westall: Wire line spoolers.

Mr. Caughey: I will stipulate that at that time

(Testimony of Mrs. Phoebe Moss.)

they were willing and were able to sell wire line spoolers; yes.

Mr. Joseph F. Westall: And they were selling them under the Reed patent at that time, were they not?

Mr. Caughey: No.

Mr. Joseph F. Westall: All right; we offer this photostat in evidence in lieu of the original——

A. That is the original out there.

Mr. Joseph F. Westall: ——as Plaintiffs' Exhibit—— [245]

Mr. Caughey: I still don't see the materiality, may your Honor please.

Mr. Joseph F. Westall: Well, the materiality of it is here they say that this device of ours was obvious and so forth and here is what they were advertising for years afterwards. They started in advertising that and they were using their old oil hanger and they kept on using it for years afterwards.

Mr. Caughey: May I read what this says? They say "The wire line spooler." There is no description of the wire line spooler.

Mr. Joseph F. Westall: Not in this particular document but they followed it, as you will see.

The Court: It may be received as Palintiffs' Exhibit No. 20.

Q. (By Mr. Joseph F. Westall): Can you produce the original of The Oil and Gas Journal of January 28, 1937, page 51?

(Testimony of Mrs. Phoebe Moss.)

A. It is in the same book with that.

Q. Oh, yes; that is right; it is.

A. At the second clip, you will find it.

The Court: Page what?

Mr. Joseph F. Westall: It is page 151.

The Court: And the date?

Mr. Joseph F. Westall: The date is January 26, 1937. [246]

Mr. Caughey: January 28.

Mr. Joseph F. Westall: January 28, 1937; that is right.

Mr. Caughey: What do you want me to stipulate?

Mr. Joseph F. Westall: I have got photostats of that.

Mr. Caughey: I will stipulate that is a Patterson-Ballagh Corporation advertisement that appeared in *The Oil and Gas Journal* on that date.

Mr. Joseph F. Westall: We offer in evidence—will you stipulate that the photostat be received in lieu of the original?

Mr. Caughey: Yes; certainly.

Mr. Joseph F. Westall: We offer in evidence the photostat just referred to as Plaintiffs' Exhibit No. 21.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 21 in evidence.

The Court: We will take a recess at this time of ten minutes.

(Short recess.)

(Testimony of Mrs. Phoebe Moss.)

Q. (By Mr. Joseph F. Westall): Can you produce The Oil and Gas Journal of March 25, 1937, page 199? A. Yes.

Q. Is that it? A. Yes.

Mr. Joseph F. Westall: We have no copies of this and we will have to get photostats. And so we will—— [247]

The Court: I think your witness wants to say something.

A. We have one photostat of that.

Q. (By Mr. Joseph F. Westall): I have got it marked here "No photostat."

A. I believe the librarian brought a photostat of each of these. It would be the dark pictures on the other side there.

Mr. Joseph F. Westall: Apparently, we haven't that. If I had it, I would put it in evidence. Well, I will take it all back; I have two of them. Will you stipulate, Mr. Caughey, that that be put in evidence?

Mr. Caughey: I will stipulate that it is an advertisement of the Patterson-Ballagh Corporation and that it appeared in The Oil and Gas Journal of March 25, 1937.

Mr. Joseph F. Westall: At page 199?

Mr. Caughey: At the page that is marked there on it. Is it page 199, your Honor?

The Court: Yes; page 199.

Mr. Joseph F. Westall: And also that Patterson-Ballagh was selling those devices at that time?

Mr. Caughey: Yes.

(Testimony of Mrs. Phoebe Moss.)

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 22 in evidence.

Q. (By Mr. Joseph F. Westall): Will you find The Oil and Gas Journal of August 12, 1937, page 91? [248]

A. Yes.

The Court: How many of those have you, Mr. Westall? I am wondering if you can't get them all at one time and exhibit them to counsel and then offer them, instead of taking so much time.

Mr. Joseph F. Westall: Yes, but I haven't copies of all of them.

The Court: I see you have a large number of books there and I thought it might save time.

Mr. Joseph F. Westall: I don't see how I can because some of them I don't have copies of.

Q. Have you got the one for August 12, 1937?

A. Yes; and I think you will find two copies of that. I think we had copies made of everything we didn't have, so that we could produce them.

Mr. Joseph F. Westall: I don't think I have copies of that. No; there are no copies of that.

Mr. Caughey; I will stipulate that it is an advertisement of the Patterson-Ballagh Corporation and that it appeared on page 91 of The Oil and Gas Journal of August 12, 1937.

Mr. Joseph F. Westall: Yes; all right.

The Court: Do you want to supply that when you have a photostat made of it?

Mr. Caughey: I will stipulate a photostat may be offered [249] in evidence as in the other cases.

(Testimony of Mrs. Phoebe Moss.)

The Court: To be known as Exhibit 23, is that it?

Mr. Joseph F. Westall: No. 23.

The Court: May I see that? It may be received.

Q. (By Mr. Joseph F. Westall): The next is The Oil and Gas Journal of October 7, 1937, page 233.

A. Here it is. There are two in that one.

The Court: What date?

A. October 7, 1937.

Mr. Joseph F. Westall: The date is October 7, 1937, page 233. And we have copies of that, one copy of which I will give counsel. And I suppose you will stipulate that was an advertisement of the Patterson-Ballagh Corporation?

Mr. Caughey: Yes; the same stipulation.

The Court: It may be received.

Mr. Joseph F. Westall: And that Patterson-Ballagh made and sold those devices?

Mr. Caughey: They are the same ones that we previously stipulated to.

Mr. Joseph F. Westall: This is a later date.

Mr. Caughey: They did it before and still were.

Mr. Joseph F. Westall: We offer that in evidence as the next number.

The Court: Does that stipulation run-through all of these advertisements, that they were made and sold by the corporation, [250] or just these two or three you have stipulated to?

Mr. Joseph F. Westall: It is important to show,

(Testimony of Mrs. Phoebe Moss.)

which is a very important part of our case, that they continued it through 1937 and in 1938 they were still continuing and in 1940. It shows what they were using and what they were doing. On April 25, 1940, they were using the same thing, and June 3, 1944.

Mr. Caughey: I am not accepting those statements.

Mr. Joseph F. Westall: If you would accept them, we could stipulate to it.

Mr. Caughey: I don't know what you are talking about.

The Clerk: The last exhibit is No. 24 in evidence.

Q. (By Mr. Joseph F. Westall): The next is The Oil and Gas Journal of October 21, 1937, page 71.

A. It is in that same book and has a clip on the page.

Q. It is October 21, 1937, page 71?

A. Yes.

Mr. Joseph F. Westall: We offer in evidence The Oil and Gas Journal of October 21, 1937, page 71, as Plaintiffs' Exhibit 25.

Mr. Caughey: I will stipulate that is an advertisement of the Patterson-Ballagh Corporation as of that date, page 71 of The Oil and Gas Journal of October 21, 1937.

A. We have the original and the photostats are enclosed in the original. [251]

Q. (By Mr. Joseph F. Westall): The original

(Testimony of Mrs. Phoebe Moss.)

of this? A. Yes; page 71.

Q. Yes; we have. We have the original book.

Mr. Joseph F. Westall: We will offer that original book in evidence and we also have photostats and I will give you a photostat.

Mr. Caughey: There is no need of putting in the original book as far as I am concerned.

Mr. Joseph F. Westall: All right. So, therefore, under counsel's stipulation, we will——

Mr. Caughey: I never included in the stipulation that that was being manufactured and sold at that time. The reason is there is a question in my mind about some of these things here and I can clear it up by Mr. Ballagh when we get him on the witness stand. But I don't want to enter into that stipulation at the present time.

The Court: This may be received.

The Clerk: Plaintiffs' Exhibit 25, the one dated October 21, 1937.

Q. (By Mr. Joseph F. Westall): I want to ask you, referring to Exhibit No. 25 in evidence, to please state whether or not that illustration correctly represents the Patterson-Ballagh line spooler. Is that right-side up, in other words?

A. If it were right-side up, it would represent it. [252]

Q. But it is upside down in the advertisement?

A. The picture is upside down, and the way I have ever seen them—I have never seen them in a derrick like that.

(Testimony of Mrs. Phoebe Moss.)

Q. There is no hanging line in there, is there?

A. There is a hanging line attached to the middle eye in that picture.

The Court: What exhibit is that?

Mr. Joseph F. Westall: Exhibit 25.

Q. Do you find The Oil and Gas Journal of December 3, 1937, page 186?

A. That is December 30, 1937, yes, page 186.

Q. That is December 3, 1937.

A. No; it is December 30, 1937.

Q. Oh, yes; December 30, 1937, page 186. We have three photostats of that.

A. Your Honor, could I separate those photostats?

The Court: If you want to assist counsel, you may step down and help him out. While you are about it, if you can get together all that you are going to offer along the same line, we can save some time here.

Mr. Joseph F. Westall: We have three copies of that, one of which I will give to counsel. We offer in evidence the photostat and I suppose counsel will stipulate that that is an advertisement of the Patterson-Ballagh Corporation.

Mr. Caughey: I think this is the same one that is already [253] in evidence. It is part of the advertisements previously offered. I have no objection to putting it in again as a separate exhibit, if you wish.

The Court: It may be received.

(Testimony of Mrs. Phoebe Moss.)

The Clerk: Plaintiffs' Exhibit 26 in evidence.

Q. (By Mr. Joseph F. Westall): Have you got The Oil Weekly of March 15, 1937?

A. Yes; page 69.

Q. We have no copies of that, have we?

A. No.

Mr. Joseph F. Westall: We offer in evidence the copy of The Oil Weekly of March 15, 1937. We have no copies.

Mr. Caughey: I would like to see it first, Mr. Westall.

Mr. Joseph F. Westall: It is The Oil Weekly of March 15, 1937, page 69.

Mr. Caughey: No objection.

Mr. Joseph F. Westall: And you stipulate that that was manufactured and sold—or that is the ad of Patterson-Ballagh?

Mr. Caughey: That is correct.

Mr. Joseph F. Westall: And that about that time they were selling the device illustrated?

Mr. Caughey: That they were manufacturing and selling them. [254]

Mr. Joseph F. Westall: Then, we offer that in evidence and, not having any copies, we will have to have photostats made of it. You will agree that those photostat copies may be substituted, will you, Mr. Caughey?

Mr. Caughey: Yes.

The Clerk: That will be Plaintiffs' Exhibit 27.

The Court: Will you let me see it?

(Testimony of Mrs. Phoebe Moss.)

Mr. Joseph F. Westall: It shows the hanging from the middle eye.

A. Does that one show the hanging?

Q. Yes. The next one is *The Oil and Gas Journal* of December 29, 1938, page 195.

A. Yes.

The Court: What is that book?

A. *The Oil and Gas Journal*.

Mr. Joseph F. Westall: Of December 29, 1938, page 195.

Q. Let's see the original. Are you sure that is the right one? A. Here is the original.

Q. Oh, yes.

The Court: That will be exhibit what?

Mr. Joseph F. Westall: Will you stipulate that it was an advertisement of the Patterson-Ballagh Corporation and that it was manufactured and sold the date it bears?

Mr. Caughey: Yes; I will so stipulate, that [255] the Patterson-Ballagh Corporation were either manufacturing and selling them or offering them for sale at that time.

Mr. Joseph F. Westall: December 29, 1938?

Mr. Caughey: That is right.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 28 in evidence.

Q. (By Mr. Joseph F. Westall): The next is *The Oil and Gas Journal* of November 18, 1938, page 40, of which we have two photostats.

A. Here are the photostats.

Q. Have you got the original book?

(Testimony of Mrs. Phoebe Moss.)

A. It is here; yes.

Mr. Joseph F. Westall: I will show the original book to counsel.

Mr. Caughey: May your Honor please, I don't object to his putting those exhibits in but, candidly, I don't see the materiality of it. The patent wasn't issued until 1940.

Mr. Joseph F. Westall: Yes; but you show you were hanging from the middle.

Mr. Caughey: These are not hung from the middle. What is the materiality of that?

Mr. Joseph F. Westall: We want to show they were hanging from the top there and when they changed.

Mr. Caughey: I will stipulate when they changed and you don't have to put all of these in. [256]

Mr. Joseph F. Westall: There are not so many more and I think I would like to get them in.

The Court: Put in your evidence. How many more do you have of those?

Mr. Joseph F. Westall: This one, I think, is already in evidence as Exhibit 10J of the deposition. So we won't need to put that in.

The Court: What date is that?

Mr. Joseph F. Westall: It is November 18, 1938, page 40.

The Court: That is already in evidence, is it?

Mr. Joseph F. Westall: That is already in evidence as Exhibit 10J.

Q. Now, the next one is The Oil and Gas Journal of December 1, 1938, page 74.

(Testimony of Mrs. Phoebe Moss.)

A. It is in evidence, too.

Mr. Joseph F. Westall: That also is in evidence.

The Court: Are those photostat copies in evidence?

Mr. Joseph F. Westall: Yes; those photostat copies are in evidence. One reason we put these in here was because counsel objected to the pen date on some of them, but he has since waived that objection.

Mr. Caughey: A long time ago.

The Court: What is the former exhibit?

Mr. Joseph F. Westall: No. 28, which is already in. [257]

The Court: Do you withdraw the one dated December 1, 1938?

Mr. Joseph F. Westall: No. That is already in evidence as Exhibit 10-J.

The Clerk: That is Exhibit 10-L, your Honor.

Mr. Joseph F. Westall: The next is The Oil and Gas Journal of April 25, 1940, page 20. We have three photostats of that and that is not in evidence, is it? Well, yes; that is in evidence as Exhibit 10-H.

The next is The Oil and Gas Journal of June 3, 1944, page 100, of which we have two photostats. Well, that is Exhibit 10-M. That is in evidence, too. The next is The Oil and Gas Journal of March 31, 1945, page 8. I don't think we have got that one in evidence.

A. No; I don't seem to find that. Well, here it is in this book; yes. This is it.

(Testimony of Mrs. Phoebe Moss.)

Mr. Caughey: Yes; I will stipulate to that.

Q. (By Mr. Joseph F. Westall): Have we photostats of this? A. Yes.

Mr. Joseph F. Westall: I had better offer those instead, then.

A. You must have them down there.

Mr. Caughey: I will stipulate you may put in the photostats later. [258]

Q. (By Mr. Joseph F. Westall): March 31, 1945. Have you got that one?

A. That is the one we just had, March 31, 1945.

The Court: May I see that? That may be supplied later on by your photostat. That will be exhibit what?

The Clerk: Exhibit 29.

Mr. Joseph F. Westall: Yes. It is The Oil and Gas Journal of March 31, 1945.

Q. The next is The Oil Weekly of February 19, 1945, page 49.

A. The Oil Weekly of February 19, 1945?

Q. Yes.

A. Yes; it is the same as the previous ad.

The Court: The same as Exhibit 29?

A. It is.

Mr. Caughey: I will so stipulate and there is no need of putting it in evidence.

Mr. Joseph F. Westall: Yes; that is the same as Exhibit 29 and we don't need to put it in for that reason, except will you stipulate it is the same ad as found in The Oil Weekly of February 19, 1945, at page 49?

(Testimony of Mrs. Phoebe Moss.)

Mr. Caughey: That is correct.

Mr. Joseph F. Westall: And that it was manufactured by the Patterson-Ballagh Corporation?

Mr. Caughey: That is correct. [259]

Mr. Joseph F. Westall: And that they offered for sale the devices shown in that advertisement?

Mr. Caughey: They offered for sale the particular device, the spooler, which is shown in that ad, which I presume is an issue in this case, but there are a lot of other structures in there that have nothing to do with it.

Q. (By Mr. Joseph F. Westall): The only remaining one is The Oil Weekly of June 24, 1946, page 66.

A. It is here.

Q. Have you got it? A. Yes.

Q. May I see it? A. Yes.

Mr. Caughey: I will stipulate that that is an advertisement of Patterson-Ballagh, which was a division of the Byron-Jackson Company at that time, and that the device which is referred to as a wire line guide and shown in the cut at the right, at the lower side, was being offered for sale by that division.

Mr. Joseph F. Westall: At the time of the date mentioned, June 24, 1946?

Mr. Caughey: At the time of the date; correct.

The Court: That will be Plaintiffs' Exhibit No. 30.

Mr. Joseph F. Westall: Have we got photostats yet?

The Clerk: Not yet. [260]

(Testimony of Mrs. Phoebe Moss.)

Mr. Joseph F. Westall: I don't think we have photostats. I have here "no photostats ordered." Will you stipulate we may supply the photostats in place of the original?

Mr. Caughey: Yes.

Mr. Joseph F. Westall: You may cross-examine.

The Court: Was that last exhibit the same as the other ad?

Mr. Joseph F. Westall: No. That is another one, although the pictures are a good deal the same.

The Court: I didn't see that.

Mr. Joseph F. Westall: What is the number of that in evidence?

The Clerk: That is No. 30, of which you are going to furnish a copy later.

Mr. Joseph F. Westall: February 19, 1945, page 49, should be Exhibit 30, isn't that right?

The Court: This is June 24, 1946.

Mr. Joseph F. Westall: June 24, 1946, ought to be Exhibit 31.

A. No; it is page 66.

The Clerk: Page 66 is the last one you offered, isn't it?

The Court: The last one I have is Exhibit 30, June 24, 1946, page 66. Is there anything since then?

Mr. Joseph F. Westall: That should be 31. [261]

The Clerk: What do you have as 30?

Mr. Joseph F. Westall: If you have marked it 30, we will mark it 30.

The Court: Which is 31?

(Testimony of Mrs. Phoebe Moss.)

Mr. Joseph F. Westall: Here will be one. We offer in evidence The Oil Weekly of February 19, 1945.

The Court: February 19th is Exhibit 29.

Mr. Joseph F. Westall: We offer in evidence The Oil Weekly of February 19th, page 49.

The Court: They stipulated that is the same as Exhibit 29. So you didn't need to offer that.

Mr. Joseph F. Westall: I guess we did that. And then we have 30 and that is the last one.

Cross-Examination

By Mr. Caughey:

Q. You testified, did you not, Mrs. Moss, that you saw the line spooler which was in position at the Holly Oil Company well in Huntington Beach?

A. I saw it put up into the derrick.

Q. On what date was that, to the best of your recollection? A. April 5, 1937.

Q. Are you relying upon your recollection for that? A. No.

Q. Have you some records to support it? [262]

A. It was put up just before the well was spudded in and the well was spudded in April 7th, and they were rigging up and getting ready to drill the well and they put the spooler up the 5th day of April.

Q. You say that well was spudded in. What well was that? A. Holly 7-A.

Q. It was spudded in on what date?

(Testimony of Mrs. Phoebe Moss.)

A. April 7th. That is the date on their drilling log.

Q. You weren't there when it was spudded in?

A. I was not present when it was spudded in.

Q. You say you were there before it was spudded in and when the spooler was up in the rig?

A. Yes.

Q. And was the wire rope threaded through the spooler at that time? A. Yes.

Q. How far up in the rig was the spooler?

A. It was about 20 feet above the drum.

Q. About 20 feet?

A. Or the second girt over the drum.

Q. The second girt over the drum would be 17 feet, wouldn't it?

A. Well, I don't know. I never measured the girts in the derrick. [263]

Q. Then, would you say that it was the second girt? A. Yes.

The Court: May I have that again, when you saw that rigged up?

A. It was spudded in April 7th.

The Court: That is, the well was?

A. Yes.

The Court: But when did you say this——

A. April 5th.

The Court: April 5th?

A. Yes.

The Court: What year?

A. 1937.

The Court: The well was spudded in when?

(Testimony of Mrs. Phoebe Moss.)

A. April 7, 1937.

Q. (By Mr. Caughey): It is your recollection that the spooler was hung—or I mean the supporting wires or lines on either side of the spooler were attached to the second girt up?

A. The supporting lines on the side went over the pulleys that were attached to the side.

Q. To the second girt? A. Yes.

Q. And do you recall how far up the line it was attached to the upper part of the spooler and which has been referred [264] to as the hanging line, how far up the rig that was attached?

A. How many girts up I don't know.

Q. You don't know? A. No.

Q. What was the line through which the spooler was threaded, or which was threaded through the spooler, rather—what was it attached to?

A. The drilling lines of a well are attached, evidently, to the drilling tools. I am not so well versed as to be able to tell you how they are drilled. I know what the drilling line does but I couldn't tell you the details of it because I don't know.

Q. In other words, you don't recall when you saw it on that date what it was attached to, is that right?

A. I do recall. I know what the drilling line on the well is.

Q. I am not asking you that. I am asking you if you recall what it was attached to when you saw it, attached to on April 5th.

(Testimony of Mrs. Phoebe Moss.)

A. They were rigging up and, therefore, the drilling line was not yet in use.

Q. Was it slack? A. It wasn't in use.

Q. It would evidently, if it had weight on it, be [265] taut? A. I don't know.

Q. You don't know whether it was taut or slack?

A. I know, after they threaded it in through the spooler and went to use it, it was, naturally, taut.

Q. Did you see it after it was used?

A. Yes; I did.

Q. On what date?

A. I don't know the exact date because I was down there several times while the well was being drilled.

Q. Do you recall how long that well was being drilled?

A. Offhand, no. I have read on the log. I have the log here.

Q. You were there several times, were you?

A. Yes; I was.

Q. And that was the first spooler that your husband made, is that correct?

A. That is right.

Q. And that was the one that was made, as your husband testified in his deposition, in the latter part of November, 1936?

A. That is right.

Q. Did you see this—you have been in the court room all during the time that the testimony has been taken, haven't you? [266]

A. Yes; I have.

(Testimony of Mrs. Phoebe Moss.)

Q. And you have heard all of the witnesses that were called on behalf of the plaintiffs?

A. Yes.

Q. Did you see the spooler which was in place on the Republic well? A. Yes; I did.

Q. You saw that? A. Yes.

Q. That was later on, in 1937, was it?

A. Yes; it was in July and August. The exact dates I don't know, what date it was put up, but I believe it was July 21st.

Q. And did the spooler that was hung in the well at Huntington Beach have, in addition to the hanging line, a line which was referred to as a safety line? A. It had two safety lines.

Q. Where were they hung?

A. On each arm, where that eye is represented on the arms, out to the side. There was a safety line attached to each one at the top, right in through those little eyes. There were two slack lines, one on either side.

Q. You say there were two slack lines that were attached to the eyes on each side?

A. Of the spooler, near the top. [267]

Q. And only one to one side of the derrick—

A. No.

Q. How were they fastened?

A. Through the eye and to a girt, loosely tied.

Q. One on each side?

A. One on each side, where those eyes are.

Q. And were those lines fastened separately on the girt, those safety lines?

(Testimony of Mrs. Phoebe Moss.)

A. They were fastened separately to the closest girt to them.

Q. They were relatively short? A. Yes.

Q. And slack? A. They were slack.

Q. And was that the way that the safety lines were fastened on the Republic well also?

A. I don't believe the safety lines were put on the Republic well.

Q. Just the hanging line?

A. Just the hanging line; yes.

Q. Did they have the eyes, as you have described, on the spooler that was put on the hanging line, to which it could be attached if they wished?

A. Yes.

Q. But you don't recall any being on [268] there?

A. No; I don't.

Q. Did you see any Patterson-Ballagh spoolers prior to April 5, 1947? A. No; I didn't.

Q. Do you recall the testimony of your husband that he saw one shortly before Christmas, 1936?

A. That is right.

Q. But you were not present at that time?

A. I wasn't there with him at the time.

Q. And you weren't present, were you, Mrs. Moss, when the disclosure was made to Mr. Andersen, as testified to, in May, 1936?

A. No; I wasn't.

Q. You weren't there at that time?

A. No.

Mr. Caughey: I believe that is all.

Mr. Joseph F. Westall: That is all, Mrs. Moss.

At this time I would like to request the court to take judicial notice, and make the same a matter of record, of the following circumstances. I refer, first, to page 42 of the World Almanac of 1946, stating that the United States declared war on Japan on December 5, 1941, and declared war on Germany and Italy on December 11, 1941.

The Court: What is that, again?

Mr. Joseph F. Westall: It says it declared war on Japan [269] on December 5, 1941, and declared war on Germany and Italy on December 11, 1941, and declared war on Bulgaria, Hungary and Rumania on June 5, 1942.

Also, on page 42 of said World Almanac, that Germany surrendered unconditionally to the Western Allies and the Soviet Union on May 7, 1945.

And then I shall ask the court to take judicial notice that, although the shooting stopped, we have not yet had peace and the war thus continues, although we don't shoot any more. The infringement commenced after the grant of the Moss patent in suit, February 20, 1940, and has continued.

Mr. Caughey: Are you asking the court to take judicial notice of this?

Mr. Joseph F. Westall: No. I am making that statement to show the action of the defendants and it has continued and will be shown to the present date.

The Court: When did you say the infringement took place?

Mr. Joseph F. Westall: It began after the grant of the patent on February 20, 1940, and has continued, as has been or will be apparent, and as we believe is apparent from the record, to the present date. That evidence has to do with the question of laches which will have to be presented. The court has read this letter dated March 24, 1940, in which Mr. Ballagh, secretary of Patterson-Ballagh, says, "Due to the war situation and its effect upon the rubber business and the [270] oil business, we have decided against making any commitments of this kind at the present time. When the war situation clears up, we might be in a better position to talk with you about this."

At the beginning of the letter he says, "I have talked with my associate relative to the purchase of your patent." That was in 1942. I was reading from Exhibit 19 as merely showing that Mr. Moss had suggested a settlement and the reason he didn't sue sooner is because he expected a settlement.

Mr. Caughey: Would that be a ground for not suing?

Mr. Joseph F. Westall: Yes; it would if you had bought the patent.

Mr. Caughey: I hope you will never get caught in that way.

Mr. Joseph F. Westall: And with that judicial notice, we close our case.

Mr. Caughey: Shall I proceed or shall we take a recess until morning?

The Court: Have you any depositions to read?

Mr. Caughey: No, your Honor.

The Court: We will get a fresh start in the morning.

Mr. Joseph F. Westall: Can you give me some idea of how long it will take you to put in your case?

Mr. Caughey: I think about a day but, of course, I can't [271] tell because I don't know how long your cross-examination will be.

Mr. Joseph F. Westall: I don't think it will be long.

Mr. Caughey: We may be through tomorrow. I am not making any promises but that is a possibility.

The Court: We will take a recess until tomorrow morning at 10:00 o'clock.

(Thereupon, a recess was taken until 10:00 o'clock a.m., Thursday, February 19, 1948.) [272]

* * *

J. E. REED

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

A. J. E. Reed.

Direct Examination

By Mr. Caughey:

Q. Your first name is John, is it not, Mr. Reed?

A. That is right.

Q. And what is your present address?

A. 121 East El Camino, Santa Maria.

Q. California? A. California.

Q. And what is your present occupation?

A. Drilling superintendent of the Union Oil.

Q. How long have you been drilling superintendent for [275] the Union Oil Company?

A. Since 1934.

Q. And how long have you been employed by the Union Oil Company? A. 34 years.

Q. That was almost the inception of the Union Oil Company, wasn't it, Mr. Reed?

A. It was about 10 years old, I imagine, when I started.

Q. Would you state briefly, from the time that you began working for the Union Oil Company, what experience you have had in the oil fields?

A. Well, the first three years I was a rig builder and I went to work in 1904, and then I spent until 1907 as a rig builder, and from 1907 until 1910 I spent as a tool dresser, and then from 1910 on to

(Testimony of J. E. Reed.)

1935 I spent as a driller, and from 1935 I have been drilling superintendent.

Q. Have you been drilling superintendent in any particular place or general drilling superintendent?

A. In the Bakersfield area I didn't have very—I only had about five wells running until I was promoted to the whole district and that was in 1938, and then I was drilling superintendent for the whole San Joaquin Valley, and then, when the Union Oil Company did away with their drilling department and went over to contracting, I was the [276] drilling superintendent for the Santa Maria district and am now.

Q. When did they do away with drilling their own wells and go to contracting? How long ago?

A. Just a year ago the 1st of this February.

Q. Did you work for any other concern in the oil fields excepting the Union Oil Company, Mr. Reed?

A. Yes, sir; a few times being loaned out by the Union Oil Company.

Q. But your long experience in the oil fields has been, primarily, with the Union Oil Company, has it? A. With the Union Oil Company.

Q. Are you familiar with oil well rigs as they are used in that field? A. Yes, sir.

Q. Do you know what the height of the oil well rigs was in 1936 and 1937, for example?

A. Well, there was 122-and 136-foot derricks.

(Testimony of J. E. Reed.)

Q. In that 122-foot derrick, what was the floor space? A. 24 feet.

Q. Was that a square? A. Yes, sir.

Q. And what was the width across the top of the derrick? A. Five foot six inside.

Q. And that 24-foot was an inside measurement also? [277] A. It was inside also.

Q. Now, on the 136-foot derrick, what was the measurement at the base? A. 26 feet.

Q. 26 feet on a side? A. Yes.

Q. And at the top? A. Five foot six.

Q. The same as in 122? A. That is right.

Q. And what was the reason for that, Mr. Reed?

A. Well, the crown block was the same size that we used those days. We used the same sized crown block and the inside space at the top of the derrick was the same.

Q. In general, what is a crown block?

A. That is a block that sets on top of the derrick, that the lines run through or spool through.

Q. How many lines are there?

A. Well, there were six shivs on top at that time or pulleys and six shivs in the traveling block.

Q. And the lines ran through those shivs, is that right?

A. They run through there, right through those shivs. We are talking about a steel derrick, aren't we?

Q. Yes. Those steel derricks were used in 1936 and 1935, [278] is that correct?

A. Yes; that is correct.

(Testimony of J. E. Reed.)

Q. The old wooden derricks had gone out by that time?

A. Well, there were a few of them being built.

Q. I show you a composite catalog, oil field catalog, of 1936, and page 134, which is an advertisement of the Baash-Ross catalog. Do you recognize the crown block, that you have referred to, in those pages?

A. Yes; I do.

Q. And was that the crown block that you were using in 1936?

A. Yes, sir; the one we used, with 48-inch shivs.

Q. 48-inch shivs? A. That is right.

Q. And that crown block set up on the top of the derrick?

A. That is right.

Q. Facing down?

A. Yes. This was up and this was down.

Q. Page 134 of the composite catalog—or, prior to that, I will ask will you stipulate, Mr. Westall, that pages 134 and 135 of the composite catalog, which is a well-known publication of the oil fields, may be introduced to show the crown blocks and the measurements of the same?

Mr. Joseph F. Westall: I don't see any materiality but [279] I will stipulate to it and also stipulate that photostatic copies may be furnished and offered in evidence.

Mr. Caughey: Thank you. It is the 1936 edition, published by The Oil Weekly, and this is Volume No. 7.

Q. This is a well-known publication in the oil industry, is it not, Mr. Reed?

A. Yes, sir.

(Testimony of J. E. Reed.)

Mr. Joseph F. Westall: Has the clerk got the pages?

The Clerk: Pages 134 and 135.

The Court: Are both of those pages marked?

The Clerk: Counsel wishes to substitute photostats.

The Court: Photostats of what pages?

Mr. Caughey: 134 and 135. One page shows the structure and the other page gives the measurements and so on.

The Court: It may be received as Defendants' Exhibit A, to be later substituted by photostatic copies of both pages. Is that right?

Mr. Caughey: Yes, sir.

The Court: Pages 134 and 135.

Q. (By Mr. Caughey): You stated that the width of the crown block you used was 48 inches?

A. Yes, sir, that is, the pulleys.

Q. Where would the line which ran from the crown block to the drum on the floor come off at the top of the rig?

A. Coming down to the drum? [280]

Q. Yes, sir.

A. It would come off on the drum side.

Q. And how far in approximately would that be from the side of the rig that it came down on?

A. Well, in the first place they put those crown blocks up on top of the derrick and they put the traveling blocks down and thread the lines and then they align or they put a weight on there, what we call a drill collar. That is our operation. And then

(Testimony of J. E. Reed.)

we line that crown block up so that that drill collar hangs right in the center of where we are going to drill the hole. And we may have to get up to the top of that crown block and shove it around a little one way or the other in order to make that drill collar hang in the center. So we do move those. We have about six to eight—maybe more; I wouldn't say for sure—we have at least six or eight inches which we can move it to make it line up with the hole and that would change the pulley at the crown some, but I would say it does not run over six or eight inches; that the line is six or eight inches from the inside of the derrick, at the top.

Q. In other words, the line coming off of the crown block is six or eight inches from the side of the derrick, at the top?

A. That is right, that is, if we were using a Baash-Ross crown. [281]

Q. And then it runs down to a drum on the floor?

A. That is right.

Q. Where is that drum on the floor of the derrick situated?

A. When it is made, it is made to line with the traveling line, which is the outside shiv at the top of the crown. That is put in the rig to line with the center of a drum. That is our installation.

Q. And the inside of that drum, that is, the part that faces to the inside of the derrick—how far in is that from the edge of the derrick?

A. Do you mean the inside of the drum, that is, facing the inside of the derrick?

(Testimony of J. E. Reed.)

Q. Yes, sir.

A. Well, now, that is going to depend on the size of your drum, too.

Q. That is correct.

A. But the drum that was used in 1935 and 1936 was an 18-inch drum, that is, the ones we had.

Q. And that would throw it—in other words, the center of that drum would be in some?

A. From the header boards we put in, because in the slope of the derrick it would throw it inside, a little over half inside, of that drum. I would say 12 inches inside.

Q. And the line that came down from the top went [282] around clockwise, didn't it?

A. That is right.

Q. So it came around to the point that was closest in to the drum? A. Yes.

The Court: Does that wind from the inside or from the outside?

Mr. Caughey: It runs from the inside clockwise.

The Court: That is to say, the side closest to the center of the derrick?

Mr. Caughey: Closest to the center of the derrick.

Q. Mr. Reed, you are familiar with line spoolers, are you not? A. Yes, sir.

Q. Would you say generally what kind of line spoolers were used in the year 1935, generally speaking?

A. A piece of chain. It had a counterweight the same as that that you see there and a rope ran over.

(Testimony of J. E. Reed.)

We used in our operation about six links of chain. And it had weights tied to it that hung on this chain or that held this chain tight, and the line was threaded through the center link of this chain. And then we had another line or two other lines tied from the top of the chain to a girt, up to the derrick. Some of those were tied with two lines and some of them were tied with a line with a loop that went up five or six feet [283] and then a single line tied into that with the derrick. It was all installed differently.

Q. As I understand your testimony, then, this chain spooler through which the wire line was threaded had, in some instances, a line which was tied to one of the chains?

A. Well, we carried two lines on it.

Q. You had an upper line, did you?

A. We had a line or sometimes they were tied with a loop.

Q. Let's eliminate the loop for a moment. Just describe the one where you didn't have the loop.

A. We had two ropes tied to it.

Q. Was one of those ropes tied at the top?

A. They were both tied at the top.

Q. Describe how they were tied?

A. If we were threading it through the center link, then the link back from that—we tied a rope through that and up to a girt in the rig. Then on the other side of the line we tied another one in and up to the top.

Q. Then, as I understand your testimony, assum-

(Testimony of J. E. Reed.)

ing that we have a chain now out here like my pencil, is, you tied a line to the link, from one link here, and went up and tied it to a girt?

A. That is right.

Q. Then, from the other chain on the other side you [284] tied another line up to a girt, is that correct?

A. Yes; but we never only got one link away from where the line went through the link.

Q. In other words, you tied it right close to where it went through to the wire line guide?

A. Yes, sir.

Q. You also said something about tying it with a loop.

A. We used that same system of tying it in the same links we just talked about and used a loop and then tied it up in the loop with a single line.

Q. Was that looped to the chain and went over, is that the way it went?

A. Yes; it went from one side to the other side.

Q. And how far up was the loop?

A. I would say six or eight feet.

Q. And then you had a line to the top of the loop and ran it up and tied it to a girt?

A. Yes, sir.

Q. How far up on the derrick did you do it?

A. I would say about three girts.

Q. Was that line taut, that line at the top that you have described? Was it a tight line?

A. It was pulled up even so that the chain

(Testimony of J. E. Reed.)

couldn't come down any lower than straight across.

Q. In other words, the weight of the chain was on the [285] line? A. That is right.

Q. What was the purpose or function of that chain spooler?

Mr. Joseph F. Westall: If the Court please we, should object to this line of examination on the ground that they have not set up or pleaded in their answer any alleged anticipation by this old chain device at all. Under the elementary law, it is necessary for them to plead every defense of that character more than 30 days before the trial. That is the positive law. They haven't pleaded it in the answer and haven't suggested it, and now they are offering it in evidence with an apparent attempt at anticipation. We say that it is not admissible and we move that all of the evidence on that score be stricken out.

Mr. Caughey: I am not putting it in to anticipate the claim, may your Honor please. I am putting it in to show the state of the art and to show it was done in the art. I am not putting it in to anticipate claim 2 because, obviously, this chain didn't have lateral side devices and bridle devices such as described in that claim. I am putting it in to show the state of the art, and these chains were referred to in the testimony of the plaintiffs. They brought in these chain spoolers that they used in the old art.

Mr. Joseph F. Westall: Yes, and it is in evidence that [286] they were not tied up.

(Testimony of J. E. Reed.)

Mr. Caughey: There was some evidence but that doesn't mean that isn't the way they were necessarily used.

The Court: I would like to know the background of all of this. I don't know that it is a defense but it is historical and I imagine——

Mr. Joseph F. Westall: Yes; I am sure it will not be found to be an anticipation of the claims. The evident attempt, notwithstanding counsel's assertion, is to prove that the very essence of the patent to Mr. Moss, hanging from the top, was old. That is the purpose of it and to that extent they are attempting to state an anticipation without having pleaded it as required by the law. However, we can argue that when it comes to argument.

The Court: At all events, if this evidence later on should not be considered in connection with this matter, you may renew your motion.

Mr. Joseph F. Westall: Yes. In other words, the ruling of the court is tentative.

Mr. Caughey: I call your Honor's attention to claims 2 and 7. They are not directed solely to hanging at the top. The claim includes all of these elements and the hanging at the top is just one element of the claim. I am merely proving that hanging at the top is just one element. What was the question? [287]

(Question read by the reporter.)

A. We tried to keep the whip out of the drilling line as it was rolling onto the drum, when we

(Testimony of J. E. Reed.)

were running up the derrick, with the empty blocks, without any load on it, running up after a drill-stand, to pick one up.

Q. When did you have the problem of whipping of the line in drilling an oil well?

A. When we were running up with the empty blocks without a load, when we had the drill pipe standing in the rig and we had to run up with the empty blocks to pick up a stand, to screw it on to let it down the well.

Q. And did you have the whipping problem at any other time? A. No.

Q. In other words, when there was a load on the wire line guide, you didn't have any problem of whipping, is that correct?

A. No; we didn't have any problem. The line spooler was of no value then.

Q. When the line whipped, what was the bad effect of the whipping of the line?

A. It spooled across the drum this way and, when it was running up, if it happened to throw a whip in it and hit the drum about the same time, then it would thread a gap in there and the line wouldn't spool up tight against itself, so [288] that the line coming back has to come back and spool about four times, and that jumps away and leaves a gap. Then, when the line comes back, you have got that same gap to spool, right over the top of it.

Q. Was that the whipping you referred to?

A. It was a whipping that I referred to.

(Testimony of J. E. Reed.)

Q. Was there any other whipping on the line up or down?

A. It might whip this way but that didn't bother on spooling the line.

Q. So the only whipping that bothered on the spooling of the line was the side whipping?

A. That is right.

Q. Did this chain spooler that you used function to take some of the whip out of the line?

A. It did some but it didn't take it all out. It would throw a gap once in a while and sparks would fly off of that thing and get in the boys' eyes.

Q. Do you mean sparks from the chain there hitting the wire rope? A. Yes, sir.

Q. Did that occur very frequently?

A. Most all the time. All the time we had trouble with men getting flakes of steel in their eyes.

Q. Did you ever have any of your men get flake steel [289] in their eyes by that means?

A. A lot of them.

Q. Can you name any of them?

A. Mr. Prehoda, I know, was one of them.

Q. You say he got steel in his eyes from the chain hitting the wire rope? A. Yes, sir.

Q. Did you recognize that as a problem, to eliminate, if possible, the sparks and to do something about it? A. Yes, sir.

Q. Did you do anything about it?

A. Yes; we did.

Q. What did you do?

(Testimony of J. E. Reed.)

A. We put up a wooden line spooler.

Q. Where was that put up?

A. It was put up on Belridge 19.

Q. That is a Union Oil Company well?

A. Yes, sir.

Q. Will you just describe that wooden spooler?

A. Well, we took a piece of 6x6 hardwood and we gradually whittled it round at the drilling well. We bored an inch and one-eighth hole through it. We put a clamp at the top and a clamp at the bottom and the thing was 18 inches long, and then we put a bridle on the order of that.

Q. When you say "the order of that," are you referring [290] to the bridle on the spooler that is in the model?

A. It was made out of rope, that is, what I am talking about. And we ran practically the same weights that we ran on the old chain spooler, and then we put these clamps at the top. We had two bolts through them and the clamps at the bottom had a bolt on each side, and we took a rope and made a loop and ran through the top of this spooler, the same type of loop that we had in the chain line spooler, and we tied that at the top of the rig. Then we put one at the bottom. We didn't put that on at first. After we ran this thing, I would say maybe once in the hole—it went up and down the line, from the tension of the line—so we put another one at the bottom the same as the top, only the one on the bottom was a loose line because we had to have it loose enough so it could travel back and forth, so

(Testimony of J. E. Reed.)

that it went the width of the drum, or whatever it took to run it back and forth over to this side of the drum. We had to have the one loose on the bottom when that was going on but, when we were running in the hole, the bottom one would be tight and the top one would be loose due to the thing climbing up the line.

Q. And how about when you were coming out of the hole?

A. When we were coming out of the hole, the top one would be tight.

Q. Was the weight of the spooler suspended on the top line? [291]

A. The top line was just tight enough to hold the spooler level across.

Q. You say that spooler wasn't very heavy?

A. No; it wasn't very heavy. It was made out of hardwood and was only 18 inches long.

Q. How far up was the loop that you said you threw around?

A. I would say that loop was about six foot long.

Q. And then a line ran from the top of the loop up to the third girt?

A. Yes.

Q. The third girt up?

A. The third girt from the center of the spooler.

Q. How far would that be?

A. It would be 21 feet.

Q. Seven feet to a girt?

A. Seven feet between the girts.

Q. You say you used that in Belridge No. 19?

A. Yes, sir.

(Testimony of J. E. Reed.)

Q. When was that well drilled?

A. It was drilled in 1935. I don't remember when it was spudded in but it was in the summer or the fall of 1935 that we put that on.

Q. And you say you put that 18-inch long spooler in in 1935? [292]

A. In 1935.

Q. Then, what was the next well that you drilled, if you remember, after that?

A. Belridge 20 we went on after that well.

Q. Where was Belridge 20 drilled?

A. It was drilled in the Belridge field, which is the North Belridge in San Joaquin Valley.

Q. Was that a Union Oil Company well?

A. Yes, sir.

Q. Was Mr. Prehoda with you when you were drilling that Belridge 19?

A. He was. He was the driller on the job.

Q. Do you recall when you spudded in Belridge No. 20?

A. It was in March of 1936.

Q. You were working for the Union Oil Company at that time, of course?

A. Yes, sir.

Q. Did the Union Oil Company have any practice of asking or compelling their employees to make out records of inventions that they may have made?

A. Yes; we had at that time to send in to the Union Oil Company, if you were a supervisor, your inventions and then they had to pass on it to see if they would want it, and then they would send it back to you and, if they didn't want it——

Q. If they didn't want it, you could keep [293] it?

A. That is right.

(Testimony of J. E. Reed.)

Q. Was this wooden one that you testified to the only wooden spooler you used on Belridge 19?

A. No. We put this one up first by drilling a hole through it and at the same time we took another piece of hardwood and we drilled a hole through it and then—I might say the first one we drilled a hole through it and threaded the line through there, took it off the drum and threaded it through; and the next one we drilled a hole through it and, while that was on, we sawed it in half right down the hole to leave half of the hole on one side of the wood and the other half on the other side of the wood. Then we wound a rope around it and threw it in a fuel tank to see if we couldn't get the oil to penetrate this here second one that we were making because they had powder or dust fly off of this first wooden one, and we soaked this in an oil tank and, when we wore the first one out, we took these clamps apart and put this split wood one in and cinched the clamps back up on it and put it back on the line.

Q. And hung it in the same manner?

A. We hung it in the same manner. We never changed the hanging at all. We changed the hanging a little at first on the first one. We raised the ropes higher and lengthened the ropes out but we didn't change on the second one.

Q. When you spudded in this Belridge No. 19, did you [294] use any spoolers at all on that well?

A. Yes; we made one out of rubber.

Q. Will you please describe that?

(Testimony of J. E. Reed.)

A. We took a Patterson-Ballagh 3-inch drill pipe rubber protector and we took a piece of hose clamp, which was a safety clamp that went around the rotary hole, and we put this clamp around it and then we fastened it the same as we did the old chain line spooler excepting we didn't tie rope up or down on it because we wanted to see how fast that this wire line would wear this rubber.

Q. In other words, you just let it run up and down the wire rope?

A. Yes. We were experimenting to see how much it would wear the rubber.

Q. And how long did you use that spooler in that manner, experimenting as you say?

A. I think we used it until about June or July of 1936.

Q. And then what did you do?

A. Then we made a clamp—we wanted to stop it from moving up and down after we found out—we were all experimenting with it in there. Then we wanted to give this rubber as severe an operation as we could to see if it would stand this kind of abuse, and we found out it did stand it. So we made a clamp then out of 3/16 flat steel and we [295] made this clamp to go around this rubber and we drilled a hole at the top and a hole at the bottom on both sides, which would be four bolts, two at the top and two at the bottom, and we put the same type of bridle or hold-down line on and a hanging line as we had on the wooden one, and also, we drilled a hole through the middle and through the rubber

(Testimony of J. E. Reed.)

and put an Alemite cup on to grease it, to then see how much we could protect it.

Q. In other words, so you would lubricate the line? A. Lubricate the line.

Q. You say you did that around July, 1936?

A. It was in about July, 1936.

Q. The bridle you referred to, that you put on that spooler—how does it compare with the bridle which is on the model, in the well?

A. Do you mean that model?

Q. Yes.

A. Well, it was a piece of rope tied from that bolt hole.

Q. As I understand your testimony, the one rope went from one of the upper bolts, another rope went from one of the lower bolts, and they met in the bridle, and then a line ran from there?

A. The same as that.

Q. The same as it is here? A. Yes. [296]

Q. Do you remember what those counterweights were, how much they weighed?

A. I don't know how much they weighed. They had those counterweights made that we used on the the old chain line spooler. They were made out of a piece of pipe, with cement in it and eyes in it, and I don't remember how much they weighed.

Q. Would you just put enough counterweight on to take care of it? A. To hold this pipe.

Q. And you say you used the same kind of a loop?

(Testimony of J. E. Reed.)

A. We used the same loop on that that we used on the wooden one.

Q. And the line ran from the top of the loop up to the girt, did it? A. Up to the third girt.

Q. Did the weight of the spooler hang on that line?

A. It held it so it couldn't go down below, perpendicularly or level, as with the side lines there.

Q. In other words, the weight was on the line?

A. Yes.

The Court: Where was that loop fastened on the spooler?

Mr. Caughey: It was fastened——

The Court: Let the witness tell us.

A. It was made different than that. I should have a piece of paper and I can show you [297] better.

Mr. Caughey: Yes. Will you just draw a sketch of that, please? You might put it up here and draw it so the court can see it at the same time.

A. I am not such a good drawer. That is looking sideways at it, with four bolts. This is rubber. This is the line going through here like this, the drilling line, and this was a rope tied from here that went up here about six or eight feet and come back and tied there, and then there was a single rope tied to that and on up to a girt, and this was opposite a girt here, and up to here was 21 feet, three girts. It was tied in through the top of these bolts that went through right here.

Mr. Joseph F. Westall: What is this here?

(Testimony of J. E. Reed.)

The Witness: That is showing the top of it, looking down. Then there was another one tied here like this, with a tail rope tied down like that, because it ran up and down the line like this.

The Court: And these bolts were at the top?

A. That is right; these bolts were at the top and tied into this.

The Court: On each side?

A. It came around like this, like that.

Q. (By Mr. Joseph F. Westall): That was the one you used on what well? A. Belridge 20.

Q. Will you just mark "Belridge 20" on there and the date?

Mr. Caughey: Yes.

Q. The date, you say, was about July, 1936?

Mr. Joseph F. Westall: I think he said June or July.

Q. (By Mr. Caughey): June or July?

A. June or July, 1936.

Mr. Caughey: The sketch made by the witness to illustrate his testimony is offered into evidence as Defendants' Exhibit B.

The Court: It may be received.

The Clerk: Defendants' Exhibit B in evidence.

Q. (By Mr. Caughey): Were those two the only spoolers that you used on the Belridge No. 20 well?

A. Well, we used a spooler later on.

Q. What do you mean by "later on"?

A. This well was completed the first time on or about August 1st and all of the equipment was

(Testimony of J. E. Reed.)

moved out but, during the time we were working on Belridge 20, we were, in a crude way, making another one that was long enough to hold three rubbers.

Q. And where was that used?

A. That was installed at Gibson 7 at the same time we were drilling on Belridge 19, or Belridge 20 I mean.

Q. Was that a Union Oil well? [299]

A. Yes; right close by.

Q. Would you please describe this spooler that you have just referred to?

A. On that particular spooler we took a piece of pipe, and I can't say for sure—it was long enough to hold three of those rubbers. I think it was about 22 inches long. And we split this pipe down. First, we got the right size, and I can't say just exactly what that is. We got the right sized pipe that was the right o.d. of these rubbers, and we slipped these rubbers in the pipe to see if it would go in it and then we split it open or split it down and then we split a piece out of it so that we could have a little more friction, and we welded lugs; in other words, we took nuts and we welded those on the side of this pipe, so that we could put bolts through and clamp this thing up together, and then we put that up on Gibson 7.

Q. Did this spooler have side bridles such as shown in the model here?

A. Yes; that is right.

(Testimony of J. E. Reed.)

Q. Did you have any safety or other lines attached to it?

A. On that particular job we had a loop, that I am showing you on this larger one, and it went up 10 feet, eight or 10 feet, with a pulley in it and we tied—from the top of that pulley we went to another pulley up 21 feet or the third girt. [300] We tied them all from there because we found that was about the right place to tie them. And then we had a weight on the outside on the rig and then, when we finally got it right, we had it the same weight as the line spooler on the outside of the rig.

Q. That weight you are referring to is in addition to the counterweights that are at the bottom, is that correct?

A. Yes. It had nothing to do with this at all. All it did was hold it up.

Q. (By Mr. Joseph F. Westall): What was the date of the Gibson 7?

A. It was in 1936 when we put it up. I think it was about August.

Q. (By Mr. Caughey): August, 1936?

A. Yes.

Q. Could you make a sketch of this last spooler that you referred to, Mr. Reed, and also show the suspension means on top that you referred to?

The Court: We will take a five-minute recess and he may make that in the meantime.

(Short recess.)

Q. (By Mr. Caughey): Will you please explain this to the court, Mr. Reed?

(Testimony of J. E. Reed.)

The Court: I think it would be better if you have your witness illustrate it there. [301]

Mr. Caughey: Yes.

Q. As you go along, will you draw a lead line from the particular part that you refer to and just designate it as 1, 2, 3 or 4, as the case may be?

Mr. Joseph F. Westall: You had better put the name on, if you can.

The Court: You might put 1, 2 and 3 and number each one of those places there. Mark opposite the point there just what you are alluding to.

A. All right. This here is this line that holds the spooler up.

The Court: Mark that "1."

A. And this is the pulley that goes through the line here, and this line—shall I mark that "2"?

Q. (By Mr. Caughey): Yes.

A. This is a line that goes up to a pulley up here and down here, with a counterweight on it.

The Court: Leading from this No. 2?

A. Leading from this No. 2, and goes up and ties to a girt. I tried to use this as a part of the derrick but that doesn't come in. That is where the girts come in.

The Court: Mark that No. "3."

A. And this line goes up and comes down here.

The Court: Mark that "4."

The line comes down to the weight? [302]

A. Comes down to the weight.

The Court: Mark the weight "5."

(Testimony of J. E. Reed.)

Mr. Joseph F. Westall: That is, the weight outside of the derrick?

A. Outside of the derrick.

Q. (By Mr. Caughey): And this line, which you can call 6, is a part of the derrick?

A. Yes, sir; part of the derrick. And there is tin on the back here.

Mr. Joseph F. Westall: You had better mark the derrick.

The Court: Just put on there "Derrick."

A. All right.

The Court: And what is this? Is this a spooler here? A. Yes.

The Court: Mark that in there "Spooler."

Q. (By Mr. Caughey): Make it "Spooler." Just write "Spooler" in there.

A. And this line here is a hold-down line.

The Court: This line from the bottom?

A. From the bottom. This is the rope that goes around here and then this is a slack line, the hold-down line.

The Court: Mark it "Slack line."

Q. (By Mr. Caughey): Mark it "6."

The Court: And where the ropes are fastened, that is [303] at the top of the spooler, is it?

A. That is right, and this is the rope fastened at the bottom.

The Court: Show where the top is of the spooler.

Q. (By Mr. Caughey): Just across the top there?

(Testimony of J. E. Reed.)

A. This is steel with rubber. There are three rubbers there.

Mr. Joseph F. Westall: At the top of the spooler No. 8?

The Court: Mark that "Top."

A. These rubbers that go down through it—do you want them in there?

Q. (By Mr. Caughey): Yes; you might as well show them.

A. These are really close together.

The Court: Below the other, is that it?

A. One below the other, although they are stuck out above the top of the spooler, and this is stuck out below the bottom of the spooler.

The Court: Can the rubbers be indicated by the next number?

Mr. Caughey: Yes.

The Court: Just put along the line there "Rubbers."

Q. (By Mr. Caughey): Did that spooler have the same kind of a bridle or side bridle as shown in the model?

A. Yes; the same thing. It came like this and run over [304] to those counterweights.

The Court: Extending there each side of the spooler?

A. Yes. This was all made out of rope there.

Mr. Joseph F. Westall: And the counterweights?

A. The counterweights were down here.

The Court: Where were your clamps?

A. This was made out of a piece of pipe split in half, and all this represents is a nut we bolted

(Testimony of J. E. Reed.)

on both sides, and, looking down it, it would be like this.

The Court: The line is fastened from the top nut?
A. The top nut.

The Court: On each side?

A. Yes, because there was a gap between the nut and the line was tied up here and tied there, and that was about eight feet between there, with a pulley there, and then this line was tied at the top of the pulley and went over here and it ran over this pulley and came down here to a counter-weight that dragged up and down the side of the derrick, with tin on there.

The Court: How was this pipe fastened?

A. Two sections of the pipe. This is only showing one section.

The Court: It was fastened by these bolts there?

A. That was welded on there. They were rig nuts and we clamped this pipe tight around this rubber. [305]

The Court: You had the nuts and the bolts on inside?

A. That is right. Taking the whole thing, there would be six on each one and 12 nuts to do the whole job.

Q. (By Mr. Caughey): You say it is your recollection that that was installed in Gibson No. 7 in August, 1936, is that correct?

A. That is right.

Mr. Joseph F. Westall: You had better mark

(Testimony of J. E. Reed.)

it down there so it will show when you introduce it in evidence.

Mr. Caughey: The sketch made by the witness is offered in evidence as Defendants' Exhibit C.

The Court: It may be received.

Q. (By Mr. Caughey): Prior to leaving that, Mr. Reed, you described the suspension line from the top and the line at the bottom. Did you have any other line on there?

A. No; we didn't. Well, yes; we did. We had a safety line, what we called a safety line, which was right in the top of this and was welded into it. It was an eye, just an eye, and was welded into that thing and we had a safety line tied up to the derrick.

Q. You had better mark that "Safety line." And in that construction where was the weight of the spooler?

A. On the outside of the derrick.

Q. No. I mean where was the weight of the spooler suspended? [306]

A. Do you mean where did the spooler hang in the derrick?

Q. No. Did this upper line suspend the weight of the spooler?

A. That is right. This line that went over here and down here, with this counterweight No. 4, suspended the spooler.

Q. Do you recall how much of a counterweight you used?

A. We had to cut it off two or three times to

(Testimony of J. E. Reed.)

get the right weight. I don't know but I imagine it weighed about the same as the spooler when we got through, but I never weighed it.

Q. You wouldn't want it to weigh more than the spooler, would you? A. No.

Q. Did that spooler take up the whipping in the line?

A. It did; it took most all of it out.

Q. When I say "whip," I mean side whip.

A. Side whip.

Q. In using these spoolers, where you had these rubbers in like you have described in this exhibit Defendants' Exhibit C, where would the wear be inside?

A. It would be inside from the line carrying the spooler back and forth, as it had to go through with the line that was rolling on the drum. [307]

Q. That is, it would be in the direction of the side whip? A. That is right.

Q. I show you, Mr. Reed, two pages which purport to be a record of invention, of which copies have been furnished to counsel for the plaintiffs, and ask you if you can identify the same.

Mr. Joseph F. Westall: Now, let me see. What you showed him was this?

Mr. Caughey: Yes; that is right.

A. Yes, sir.

Q. What is that?

A. It is an affidavit of invention, on April 15, 1936, of a wire line spooler.

Q. I notice the name on there "J. E. Reed."

(Testimony of J. E. Reed.)

A. Right.

Q. On each of the separate sheets. Is that your signature? A. That is right.

Q. It was placed on there what date?

A. April 15, 1936.

Q. And I notice also on there the names of E. F. Prehoda and N. R. Bishop.

A. That is right.

Q. Who were they? [308]

A. They were drillers on the well.

Mr. Prehoda being the gentleman you referred to previously? A. That is right.

Q. And Mr. Bishop was a driller also, is that right? A. That is right.

Q. Did they sign this in your presence?

A. Yes, sir.

Q. Who was this notary, if you know, whose name appears there?

A. It was a notary public in the post office of Los Hills.

Q. And it was notaried on the date stated, is that correct? A. That is right.

Q. Was this a Union Oil form that you used?

A. That was a Union Oil form.

Q. What was done with it after you made it out, this particular instrument? Did you send it in to the Union Oil?

A. I sent it in to the Union Oil and then got a release on it. I sent in and got that and had it notarized and then I had to wait until I got my

(Testimony of J. E. Reed.)

release on the patent from the Union Oil Company.

Q. Before you could do anything with it?

A. Before I could do anything with it. [309]

Mr. Caughey: The record of invention, consisting of two sheets, which the witness has identified, is offered in evidence as Exhibit D and D-1. I believe they should go in together and that they should be attached because they really constitute one complete unit.

The Court: Do you want them attached together?

Mr. Caughey: Yes; I think they should be attached and go in as a unit as Exhibit D.

The Court: They may be received as one exhibit.

The Clerk: Defendants' Exhibit D in evidence.

Q. (By Mr. Caughey): With reference to the drum, where did you attach the upper line that you have referred to, for example, in this Exhibit C?

A. We attached it perpendicular with the center of the drum; in other words, we put it right straight up from the center of the drum, where we attached the top of it.

Q. And did you also do the same on Exhibit B?

A. Yes; we passed it right straight above the center of the rotary drum, which came down and lined it right straight with the center of the rotary drum, and we fastened it 21 feet high. That was because the line has to travel over here and over here and over here and we divided up the distance and got it right in the center of the rotary drum.

(Testimony of J. E. Reed.)

Q. (By Mr. Joseph F. Westall): It was a slack line, too, wasn't it? [310]

A. No; it wasn't a slack line. It held the spooler up. It held it up center. With the counterweight, it held it up a little above center.

Q. I am talking about this——

Mr. Caughéy: Mr. Westall, I am interrogating.

Mr. Joseph F. Westall: I beg your pardon.

Q. (By Mr. Caughéy): Had you heard of any other spooler, with wire or rubber bearings inside, at the time you made any of these spoolers?

A. Not at that time; no.

Q. When did you first hear of a spooler having rubber bearings inside?

A. Well, the first one I heard of was the Grisley, with rubber wheels.

Q. And what was that?

A. Oh, that was rubber wheels, with anti-friction bearings. It had four rollers—or there were eight rollers complete in it, four rollers going one way, and every time the line touched the rollers, it was supposed to roll instead of wearing the rubber.

Q. I show you a copy of Smith Patent No. 2,211,299 and call your attention particularly to Figures 3 and 4. Is that the structure that you have reference to?

Mr. Joseph F. Westall: Before you answer, I would like to object to that. That patent has not been pleaded in the [311] answer. On pre-trial, I believe counsel stated that he had one or two of

(Testimony of J. E. Reed.)

those, that had been cited in the file wrappers, that he would use but he didn't say he was going to use anything else, and I think he is precluded from doing that. And, furthermore, if it is put in for the purpose of showing an anticipation, it has not been pleaded, as required by law, more than 30 days before the trial.

Mr. Caughey: It is not put in to show anticipation at all. That is not the purpose, your Honor. As a matter of fact, I don't know whether I would have used it if the witness hadn't referred to this particular structure. I never knew that he ever saw it until he made this answer. It is not put in for the purpose of anticipation at all and it is a patent that just shows another structure and I just wanted to show your Honor what it is.

Mr. Joseph F. Westall: We call your attention to the fact it was patented August 13, 1940, and he couldn't very well say he saw this patent at that time.

Mr. Caughey: He didn't say he saw that patent. I asked him if that was the structure to which he referred.

Mr. Joseph F. Westall: We object to that as calling for a conclusion of the witness. Counsel has objected a great many times to conclusions of that kind during the preceding testimony.

Mr. Caughey: I don't see how this could be a conclusion. [312]

Mr. Joseph F. Westall: And he has fully described it.

(Testimony of J. E. Reed.)

The Court: This is exhibited to the witness only for the purpose of identifying the particular device concerning which he has testified and for no other purpose?

Mr. Caughey: For that purpose at the present time, certainly.

The Court: Not for the purpose of identifying a patent or anything of that kind but merely illustrative of the wheel arrangement that he testified to?

Mr. Joseph F. Westall: It is just for the purpose, apparently, of piecing out and making his description complete. I say this is just a conclusion. He should have described it sufficiently so as not to require anything else. He has already illustrated it very fully.

The Court: I think he has when he testified that he saw the Grisley device, with rubber wheels, or heard about it, rather.

Mr. Caughey: I could have him draw a sketch of it just the same as he did, but it takes time. The only trouble is taking up time to draw a sketch to illustrate the thing when we have it right here in the patent.

The Court: Is there any objection for that purpose only?

Mr. Joseph F. Westall: I will withdraw the objection.

The Court: For that purpose only and not for any other purpose? [313]

Mr. Caughey: No other purpose at the present

(Testimony of J. E. Reed.)

time at least so far as this witness is concerned. It is offered to illustrate the testimony of the witness for the purpose stated, as Exhibit E.

Mr. Joseph F. Westall: What is that patent number again, please?

Mr. Caughey: Is there an answer to the question, please?

(Record read by reporter.)

Q. Will you answer, please?

A. Yes, sir; that is the one.

Q. Did you testify you saw one in a well or you heard of one?

A. I have seen them in a well.

Q. Where? A. At Bakersfield.

Mr. Joseph F. Westall: Pardon me. I think the witness is relying upon psychic power. He has never seen the patent, has he?

A. Yes; I have seen the patent and it is all right. I have seen a lot of those line spoolers.

Q. (By Mr. Caughey): And when did you see it?

A. I don't know just exactly the year. I think it was in 1938, at the Superior Oil Company.

Q. When did you first hear of the Patterson-Ballagh spooler? [314]

A. Well, it was in along about the 1st of May, I think, around the 1st of—I don't know. It was in the early part of 1937.

Q. In the early part of 1937? A. Yes.

(Testimony of J. E. Reed.)

The Court: Do you now refer to that chain arrangement?

Mr. Caughey: No. I am referring to the Patterson-Ballagh spooler and I will more particularly identify it.

Q. When I mention the Patterson-Ballagh spooler, I will ask you if it was a spooler that in any way resembled the spooler shown in this photograph.

A. At this time, I have seen that picture but I never did see this spooler in a rig. I just heard about it.

Q. Oh, you just heard about it at first?

A. That is right.

Q. But you didn't see the spooler in a rig?

A. No; that is right.

Q. You stated something about getting a release from the Union Oil Company? A. Yes.

Q. Did you get such a release?

A. Yes; I got it in May, 1937.

Q. I show you a letter. You have seen this, Mr. Westall. A copy has been furnished counsel.

Mr. Joseph F. Westall: He has already said May, 1937, [315] hasn't he?

Mr. Caughey: He said, according to his recollection, yes.

Q. I show you a letter, on the stationery of the Union Oil Company, and ask you to look at it and state whether that refreshes your recollection as to when you secured the release. A. That is it.

Q. That is it, January 26, is it not?

(Testimony of J. E. Reed.)

A. I thought it was later than that. I didn't know it was that early.

Q. And that is the original release that you secured from the Union Oil Company, is it, Mr. Reed?

A. Let's see the signatures on there. Right.

The Court: What year?

Mr. Caughey: January 26, 1937. The release identified by the witness is offered in evidence as Defendants' Exhibit F.

The Court: It may be received.

Q. (By Mr. Caughey): I also show you another letter, dated January 26, 1937, of which opposing counsel has a copy, apparently signed by Mr. Philip Subkow, who was patent counsel for the Union Oil Company, and ask you if you recognize that letter.

A. Yes; I do. [316]

Q. And that letter was a letter, was it not, in which Mr. Subkow enclosed the release from Mr. Haylett to you?

A. That is right.

Mr. Caughey: The letter identified by the witness is offered in evidence as Defendants' Exhibit G.

The Court: It may be received.

Q. (By Mr. Caughey): You came down to Los Angeles, did you not, to get those releases, Mr. Reed?

A. Yes; I did.

Q. And, when you came down, did you see Mr. Ballagh?

A. I did.

Q. And did you also talk to myself, Mr. Caughey, at that time?

A. I did.

(Testimony of J. E. Reed.)

Q. And what was the purpose of your talking to Mr. Ballagh?

A. Mr. Ballagh had already sent in an application for a patent on this line spooler and we came down here and he thought he was ahead of me on the patent and, when we talked the situation over with you and found out that he wasn't, we brought the patent back out of the Patent Office and it was made out in my name and sent in.

Q. In other words, Mr. Ballagh had previously filed an application for a patent and it was withdrawn and your application filed? [317]

A. That is right.

Q. At that time did you make a deal with Patterson-Ballagh to license them under your application or under your invention? A. I did.

Q. And they have been licensed under it ever since, is that correct? A. That is right.

Q. When did you first use a Patterson-Ballagh protector in a well?

A. The one that Patterson-Ballagh put out themselves?

Q. Yes.

A. It was on the Rio Bravo—well, no; it was Crane Co. 134, is the name of the well. Crane Land Company is what it is, at Rio Bravo.

Q. When was that?

A. That was in 1937 but I don't remember the month.

Q. Was it the early part?

A. The early part.

(Testimony of J. E. Reed.)

Q. With reference to the photograph which I previously showed you, will you state how that line spooler compared with what is shown in the photograph? A. It is the same type.

Q. In other words, it had an eye at the middle, is that right? [318] A. Yes.

Mr. Joseph F. Westall: And what was the date of that?

Q. (By Mr. Caughey): Did you say early in 1937?

A. Early in 1937. I don't just remember the dates but it was before July of 1937.

Mr. Caughey: The Patterson-Ballagh line spooler shown in the photograph is offered in evidence to illustrate the testimony of the witness and to show the line spooler which was installed at Rio Bravo, as defendants' Exhibit H.

Mr. Joseph F. Westall: Installed when?

Mr. Caughey: He said before July, 1937.

The Court: It may be received.

The Clerk: Defendants' Exhibit H.

Q. (By Mr. Caughey): When you installed that spooler in a well, Mr. Reed, how did you suspend it?

A. The same as we show in this drawing that I made.

Q. Which one? A. That one.

Q. You testify you suspended it the same way you show in the drawing Exhibit C, is that correct?

A. Yes; with a counterweight on the outside of the derrick.

(Testimony of J. E. Reed.)

Mr. Joseph F. Westall: What was that date?

A. It was in 1937.

Q. (By Mr. Caughey): And did you attach any line to the [319] eye which is shown in the middle of Exhibit H?

A. Yes; we attached what we called a safety line there; yes.

Q. Was that a taut line or a slack line?

A. A slack line.

Q. And all the weight of the spooler was on the upper line which you have shown in Exhibit C, is that correct?

A. That one there; yes.

Q. That upper line 4?

A. Yes; that is right. We fastened it to those two eyes on this one that you show in the picture, the two top eyes.

Q. And, when you refer to the two top eyes, you refer to the eyes at each side at the top of the spooler in the photograph, is that correct?

A. That is right. Well, this spooler, it didn't make any difference which way you put it up. In other words, there were eyes here and here and you could put it up anyway, because, if it was up, we fastened it to those two top eyes and, if this end was up, we fastened it to those eyes.

The Court: And the weight rested on the suspension from the top?

A. That is right; with that counterweight that we had at the outside of the derrick.

Q. (By Mr. Caughey): Had you heard of Mr. Moss or Mr. [320] Moss' spooler up to the time

(Testimony of J. E. Reed.)

that you installed this Patterson-Ballagh spooler in the Rio Bravo well? A. No; I hadn't.

Q. When did you first hear of Mr. Moss?

A. About 1944, I think it was.

Q. You never heard of him before that time?

A. No.

Q. Did you ever see any of his spoolers in a well? A. Not until just about a year ago.

Q. Why did you attach the Patterson-Ballagh spooler at the top instead of hanging it in the middle, putting the taut line in the middle?

A. That would be the normal way to hang anything in a derrick and that is the way we had to hang all the rest of the wooden ones. In fact, the chain was tied from the top.

Q. So that you would suspend the weight from the top and have it hang perpendicularly, is that right? A. That is right.

Mr. Joseph F. Westall: That last one—what was the date of that last one that he said he hung from the top?

Mr. Caughey: Before July, 1937.

Q. And, when you hung it from the top, the Patterson-Ballagh spooler, in the Rio Bravo well, did it function to take the whipping out of the line?

A. Yes; it took the whip out of the line. [321]

Q. Do you recall how long that spooler was that you had there?

A. I don't think it was over 30 inches long.

Q. Have you ever installed any other Patter-

(Testimony of J. E. Reed.)

son-Ballagh spoolers other than this one in Rio Bravo?

A. We installed them at wells in Rio Bravo after that but they were the long ones.

Q. When you say "long ones," what do you mean?

A. They had six rubbers in them and I would say they were about 40 inches.

Q. And do you recall whether there was an eye in the middle of those or an eye at the top or how many eyes?

A. There was an eye at the top and down a ways on it.

Q. As I recall your testimony, Mr. Reed, so that there won't be any misunderstanding, you testified that on Belridge No. 19, in 1935, you made a spooler, a wooden spooler, which you had two lines on, one at the top and one at the bottom?

A. That is right.

Q. With the upper line used to suspend the weight of the spooler?

A. It was tied up tight enough to hold the spooler right level with the weight lines.

Q. And that that spooler had bridles on similar to that shown here?

A. Yes; that is right, only made out of [322] rope.

Q. And counterweights on it?

A. That is right.

Q. But it was made of wood?

A. It was made of wood.

(Testimony of J. E. Reed.)

Q. And that shortly afterwards, on the same well, you put in another wooden one which had been soaked in oil? A. That is right.

Q. And you used that on the well?

A. Yes, sir.

Q. Then, when you came to Belridge No. 20, you used a rubber spooler about eight inches long and you clamped the iron around it and you had side bridles on it and, to test it out, you let it float up and down the line freely to see how the rubbers would wear?

The Court: He has testified to this, hasn't he?

Mr. Caughey: Yes.

The Court: It isn't necessary to repeat it.

Mr. Joseph F. Westall: Yes, and it is very leading, too.

Mr. Caughey: I don't want any mistake as to what the testimony is.

The Court: The record will show.

Mr. Caughey: And, for example, I may have said "Belridge No. 19" when I meant "Belridge No. 20." In fact, in one instance I think I did.

The Court: If you want to straighten out any errors, you [323] may do so.

Mr. Caughey: I think in one question I made an error as to Belridge 19 and Belridge 20. I want to make it clear that you didn't use any wooden spoolers on Belridge 20? A. No.

Q. They were all rubber, as you have described?

A. They were all rubber.

Mr. Caughey: You may cross-examine.

(Testimony of J. E. Reed.)

The Court: Do you want to begin now or to wait until after lunch?

Mr. Joseph F. Westall: I would just as soon wait until after lunch, your Honor.

The Court: Very well.

Mr. Caughey: Well, there is one more question I might ask.

The Court: Yes.

Q. (By Mr. Caughey): Did those wooden spoolers on Belridge 19 function to take the whip out of the line?

A. Yes; they did a fairly good job. They spooled the line a lot better than the chain.

Q. Did they do as good a job as the other ones you had on Belridge 20?

A. Yes; they did as good a job as the other ones we had on Belridge 20 because they were a little bit longer than the ones we had on Belridge 20. But they wore out too fast. [324]

Mr. Caughey: That is all. [325]

* * *

J. E. REED

the witness on the stand at the time of recess, being previously duly sworn, testified further as follows:

Mr. Caughey: May your Honor please, there was one matter that Mr. Reed wanted to clear up prior to any cross-examination, that he called to my attention, and that was in connection with Exhibit D, which was the record of invention. And, with

(Testimony of J. E. Reed.)

the court's permission, I would like to clear that up.

Q. Mr. Reed, on the back of the record of invention, under "Test," under Item No. 9, it reads as follows:

"Results: It was put up April 15, one rubber, finished the well Aug. 1."

Will you state when you wrote that particular entry in?

A. I wrote that in there after the well was completed.

Q. Do you mean after you made your record of invention? A. That is right.

Q. After you received it back?

A. That is right.

Q. Is there any other part you wrote in after you received the record of invention at the [326] time? A. I don't think there is.

Q. Will you look at it to be sure?

A. No.

Q. The answer is no? A. Yes.

The Court: Let me see that, please.

Is there anything further?

Mr. Caughey: That is all.

Cross-Examination

By Mr. Joseph F. Westall:

Q. Mr. Reed, you explained the chain spooler. That chain spooler was not at all satisfactory, was it, because of the chipping off of the parts and the falling of sparks, injuring the eyes and likely to injure the eyes of the operator?

(Testimony of J. E. Reed.)

A. That is right.

Q. And it was the unsuccessful nature and impracticability of the chain spooler that led you to undertake to improve it or to get a substitute for it, is that not correct?

A. That is correct.

Q. Now, how many links did the line go through on that chain? A. One link.

Q. And how much does the chain weigh?

A. Oh, I would say—there were six links, the way we [327] put it up, of 1240 chain. For me to say what it weighed, I wouldn't know.

Q. How big was the chain?

A. I don't know. It was a 1240. I would say it weighed about two pounds to the link maybe.

Q. And how large in inches were the lengths?

A. Oh, I would say they were about two inches between the rollers.

Q. And, when the line went in through those links, it had quite a lot of clearance all around it, didn't it? A. It had quite a lot; yes.

Q. So that it did not dampen the vibrations to any extent?

A. It ran up and down the line quite a bit.

Q. And didn't dampen the vibrations to any great extent, is that correct?

A. It ran up and down the line. All it did was to take the big waves out of the line.

Q. You say it took some of the whip but not all, I believe in your direct testimony?

A. Yes.

(Testimony of J. E. Reed.)

Q. Then you made a wooden spooler 6x6, I believe, hardwood, and whittled round, you said?

A. That is right.

Q. With a hole through it? [328]

A. That is right.

Q. 18 inches long?

A. It was 18 inches long.

Q. And you had bridles made of rope, isn't that right? A. Yes; that is right.

Q. And that was the one that was used on Belridge No. 19 well, wasn't it? A. That is right.

Q. That was not satisfactory because the wood would wear off and the dust would fly?

A. That is right.

Q. So you discarded that, did you not?

A. Well, we put another set of wood in there, soaked in oil, that didn't throw the dust like the other one.

Q. But that one wasn't perfectly satisfactory?

A. No, but done a lot better job than the chain, though.

Q. And then, after that, you soaked it in oil. And was it satisfactory after that?

A. Well, it run pretty good only it still wore out too quick.

Q. So that was not practical that way?

A. No. We completed the well with it, though.

Q. You had to discard that because it would not do, is that right? [329]

A. Well, we didn't discard it. I will say we didn't use it any more.

(Testimony of J. E. Reed.)

Q. Well, that is discarding it. Now, on Belridge 20, which was drilled in the Belridge Field in the San Joaquin Valley, that you spudded in in March, 1936, do you know what time in March, 1936?

A. No. It was in about the middle of March, I think it was; maybe the last part. I think it was the last part of March.

Q. 1936? A. Yes.

Q. Then, after that—or how did that spooler work? Was that perfectly satisfactory, the one on No. 20?

A. What we were trying to find out was if the rubber would stand the wear, stand more wear than the wood stood.

Q. And that was experimental?

A. That was experimental.

Q. And that wasn't the complete solution of your problem, was it? A. No, it wasn't.

Q. And in June and July, 1936, you used the rubber spooler. How long was that?

A. This was a rubber spooler that we used first.

Q. How long was that?

A. That spooler was about eight inches, I should judge. [330]

Q. About eight inches long? A. Yes.

Q. And that, as you stated, was not the complete solution of the problem, was it?

A. We wanted to get one longer but we found out that the rubber would stand the wear.

Q. You found in that experiment it would stand the wear? A. Yes.

(Testimony of J. E. Reed.)

Q. When you got to the Gibson No. 7, which you say was about the time of Belridge 20——

A. It was during the time we were drilling Belridge 20.

Q. You took a piece of pipe 22 inches long, slipped rubbers in it and then you split the pipe?

A. That is right.

Q. And welded lugs on the side of the pipe section to bolt it together, and it was suspended on a pulley, wasn't it?

A. That is right.

Q. And the weight was outside of the derrick?

A. That is right.

Q. That was discarded? You discarded that particular construction, didn't you?

A. No; we didn't. We finished that well with it and went back to Belridge 20 at a later date, and deepened the [331] well and put it back on Belridge 20.

Q. That was the one with the weight outside?

A. That is right.

Q. And yet that was not a complete solution of the problem, was it?

A. It was doing a lot better job. I would say it was satisfactory.

Q. But, still, you didn't try to patent that particular construction?

A. Well, that was after I had sent in—or it wasn't after I sent in an application but it was after I had made an affidavit for the one I had already, after March 15.

Q. I believe in your statement here, your rec-

(Testimony of J. E. Reed.)

ord of the invention, you have a drawing here, and I would like to ask you some questions concerning that drawing, and I think, if you will hand it to the court, the original, I will show you my copy of it, that has been furnished by counsel. I call your attention to Defendants' Exhibit D and particularly to the drawing forming the second page of the exhibit and I call your attention to the line marked "G" in the first figure. And I also call your attention to the statement explaining that line "G" on the same page, which reads, "A safety line G is attached to the derrick to prevent the dropping of spooler should the counterweight ropes F break." That was the only function of this obviously slack line, safety [332] line, here, G, wasn't it?

A. That is right.

Q. And the slackness of that line is further illustrated in the side view here, where it shows it is attached with several weights before it is attached to the derrick?

A. That is right. I wasn't interested in the tying of the line up at that time. I was interested in the rubber bearings that went through the line spooler to keep from wearing the cable and also that the rubber didn't wear on the line.

Q. And you do not show nor did you have at that time any conception of putting the line above, supporting it farther up in the derrick, did you?

A. No. We had on the old type of spoolers lines going up there and we had this going out there. I was interested in the wear of the rubber. And

(Testimony of J. E. Reed.)

anyway it was installed was to keep the waves out of the line and spool it properly.

Q. But you didn't show any line in that conception sheet at all and that conception sheet is dated on the 15th of April, 1936. Now, did you work on the well, Belridge 20—you worked on that well, did you?

A. I was drilling superintendent there.

Q. And Gibson 7—did you work on that well?

A. I was the drilling superintendent.

Q. And you know what was going on? [333]

A. Yes.

Q. Did you, after making this Exhibit D out, deliver it personally to the Union Oil Company?

A. I sent it by mail.

Q. You sent it by mail? A. Yes.

Q. On the 15th of April, 1936?

A. I sent it before that.

Q. Oh, you sent it before that?

A. No; I didn't send it before April. I sent it after April 15th.

Q. You sent it after April 15, 1936?

A. Yes.

Q. How long after?

A. Oh, I imagine not more than two or three days.

Q. Yet, according to Defendants' Exhibit G, the letter from Philip Subkow, patent counsel, dated January 25, 1937, and addressed to Santa Fe Springs to you, they did not apparently pass upon this conception until January 25, 1937?

(Testimony of J. E. Reed.)

A. That is right. They held it a long time before they passed on it.

Q. You say you wrote certain things in this conception sheet, Defendants' Exhibit D, after its date. How long after its date did you write those things in?

A. Right after the well was completed—or, no—in— [334] I didn't write it in there until about, I would say, February 1, 1937, probably.

Q. February 1, 1937?

A. Yes. I don't say February 1st. I say in the latter part of February, 1937.

Q. It would be February 28th or '9th, wouldn't it, the last part?

A. Well, I don't know. I am not too sure about that.

Q. I believe you stated that at some time you knew Ballagh had applied for a patent on what you considered your device. When did you first learn that Mr. Ballagh had applied for a patent on it?

A. Well, it was after January of 1937.

Q. After January, 1937, that you heard that?

A. Well, I am not too sure about that date, either. I didn't hear he applied for a patent. I heard he was working on one at that date.

Q. When did you first hear he had applied for a patent? A. I think it was April, 1937.

Q. And then in May, as you will recall, you filed your patent application, May 22, 1937, for patent No. 2,238,398? That is correct, is it?

(Testimony of J. E. Reed.)

A. Yes.

Q. I call your attention to the drawing on the Reed patent. I will hand it to the court and I will show you my [335] copy and call your attention to the ring or lug 28 which is in the middle of the spooler, the hanging line extending upward from the middle of the spooler. That was what you filed on May 22, 1937, obviously, wasn't it?

A. Yes; but that was turned over to the patent attorney. After the agreement was made with Ballagh, it was turned over to the patent attorney and he filed the patent claims.

Q. Well, you signed it, didn't you?

A. Yes, I signed it and I told him to go ahead and get the patent and I would pay for the patent.

Q. And that is your signature there as inventor, isn't it? A. That is right.

Q. When did you license Patterson-Ballagh to manufacture and sell devices such as shown in said Reed patent which is referred to, No. 2,238,398, Plaintiffs' Exhibit 2?

A. It was in May, 1937.

Q. The date of your filing?

A. It was some time in May of 1937 was the time we changed the patent over to my name and sent it in and we made an agreement.

Q. And that is when you licensed them under it?

A. That is right.

Q. You gave them a written license? [336]

A. That is right.

Q. You provided for a royalty in that license?

(Testimony of J. E. Reed.)

A. That is right.

Q. And did you collect your royalty?

A. Yes, sir.

Q. What rate or percentage was your royalty?

A. 10 per cent on the rubber that was used in the rubbers.

Q. Is that all, just 7 per cent on the rubbers?

A. Yes.

Q. And that license still continues in effect?

A. That is right.

The Court: 7 or 10 per cent?

A. 10 per cent.

Q. (By Mr. Joseph F. Westall): And that continued in effect up to the present time?

A. Yes.

Q. And you are still drawing your royalties?

A. That is right.

Q. How did you happen to decide that, while Ballagh had been working on the patent, Ballagh wasn't the proper man to file the application?

A. Because he wasn't the inventor, I didn't think, and that I was ahead of him.

Q. And he decided that you were? [337]

A. That is right.

Mr. Joseph F. Westall: I believe that is all.

Redirect Examination

By Mr. Caughey:

Q. I believe you testified on cross-examination the first time you knew that Mr. Ballagh filed an application was in April?

A. In April, 1937.

(Testimony of J. E. Reed.)

Q. 1937?

A. Yes. I am not too sure on that date.

Q. Do you recall, Mr. Reed, of meeting Mr. Ballagh and me, in my office, in January, when we went over that matter, in 1937, and you came down from Belridge, when you got your release from the Union Oil?

A. Yes; that is right; I did come down. I had forgotten. We had two sessions in there. I had forgotten about that one.

Q. Does that refresh your recollection?

A. That is right; I was down there after January 28, 1937. But that wasn't the time I signed the agreement.

Q. No. That is correct. A. No.

Q. Mr. Westall, on cross-examination, inferred that that spooler you used on the Belridge No. 20 well, which had a bridle and lines on it, was experimental. Would you call [338] that experimental?

Mr. Joseph F. Westall: I object to that as calling for a conclusion of the witness. He has already stated the fact that it was used and discarded.

Mr. Caughey: He didn't say it was discarded. You said it.

Mr. Joseph Westall: That it was used and tried out. But it was evident it wasn't used; that it wasn't what they were looking for. His final patent application shows what they were trying to patent.

The Court: On direct examination, he said it was experimental.

(Testimony of J. E. Reed.)

Mr. Caughey; Just the first one that was used, the one that run up and down the line, the one that didn't have any side bridles on at all.

The Court: You may inquire.

Q. (By Mr. Caughey): Referring to the second spooler that you used, that is, the one with the bridles on, on Belridge 20, and also the third one, which was used on Gibson 7, and also the Belridge, would those perform or did they function to take the whip out of the line?

Mr. Joseph F. Westall: I think he has already testified to that and I think counsel is attempting to get him to vary his testimony. He testified that they were experimental and were tried and then they changed to something else, trying to [339] get perfection. That is what I mean by "experimental." That wasn't the final solution.

The Court: I think, if the witness is going to explain, he should explain himself without having suggested to him whether it was experimental or otherwise. He has already testified to it, I think.

Mr. Caughey: He testified the first one was experimental.

The Court: The first one was the chain, was it?

Mr. Caughey: No; on Belridge 20; the first one was the rubber one that he ran up and down the line to see how long the rubbers would wear.

Mr. Joseph F. Westall: He certainly testified that was experimental.

Mr. Caughey: That is correct.

The Court: And then he said as to that one it

(Testimony of J. E. Reed.)

was rather short and they wanted a long one and then they supplied another one.

Mr. Caughey: That is correct.

The Court: If he wants to make a further explanation in his own language, he may.

Mr. Caughey: All right; let him explain as to that.

A. Which one?

Q. The second one, that was used on Belridge 20, where you used a side bridle and the lower line and the upper line on it, and also the third one, where you had the counterweight [340] on it.

A. I will say this. The second one we had at Belridge 20 didn't take all of the whip out of that line. The one we had at Gibson 7, which we put three rubbers in, was satisfactory.

Mr. Caughey: That is all.

Mr. Joseph F. Westall: That is all.

Mr. Caughey: Mr. Prehoda.

E. F. PREHODA

called as a witness for the defendants, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

A. E. F. Prehoda.

Direct Examination

By Mr. Caughey:

Q. Where do you reside, Mr. Prehoda?

A. 208 El Tejon Avenue, Oildale, California.

(Testimony of E. F. Prehoda.)

Q. That is near Bakersfield?

A. That is a suburb of Bakersfield; yes, sir.

Q. What is your present occupation?

A. I am a drilling foreman for the Santa Fe Drilling Company.

Q. How long have you been employed by that concern?

A. The Santa Fe Drilling Company was recently organized and I have just been with the Santa Fe Drilling Company [341] one year. Prior to that time I was with the Union Oil Company for 25 years.

Q. 25 years? A. Yes, sir.

Q. While you were with the Union Oil Company, what were your various positions?

A. I was a tool dresser, a derrick man and a driller.

Q. Do you know Mr. J. E. Reed, who was previously on the stand? A. I do.

Q. Did you ever work under him?

A. I worked under Mr. Reed for over 20 years.

Q. Did you work under him at Belridge No. 19 well? A. I did.

Q. And when was that? What time?

A. That was in May, 1935.

Q. And when was the well completed?

A. In about August, 1935; probably the last part.

Q. Do you recall a line spooler being used on that well?

(Testimony of E. F. Prehoda.)

A. I recall the first block line spooler used; yes, sir.

Q. Have you heard the testimony of Mr. Reed? Were you in the court room while he was testifying? A. I was.

Q. Did the block that was described by him—was that [342] the one you have reference to?

A. It is.

Q. Do you agree with his testimony that that was a correct construction of the block?

A. I do.

Q. Was there any other spooler used on that well except that block spooler you have reference to?

A. We had two block spoolers used on this well.

Q. You did? A. Yes, sir.

Q. Did you have anything to do with constructing that block spooler?

A. I helped make five of them.

Q. What did you do?

Mr. Joseph F. Westall: Let me ask you just what block spooler is that?

A. The wooden spoolers.

Q. (By Mr. Caughey): What did you do?

A. I helped shape them. I helped bore the holes in the first line spooler, which was made of hardwood, and I hung the first line spooler.

Q. Will you state how that first line spooler was hung?

A. It was hung by a bridle. The bridle was anywhere from five to six feet and in its loop it was—it was tied with a single line in the center of the

(Testimony of E. F. Prehoda.)

spooler, that is, of [343] your loop, and fast to the girt about 45 feet from the floor.

Q. How high was the spooler in that well?

A. 24 feet; the third girt up.

Q. And where was that loop tied?

A. That loop was tied on both sides of the center of the clamp.

Q. And when you say "clamp," do you mean the clamp surrounding—

A. The clamp surrounding the wood itself.

Q. And were there side bridles and counterweights on that?

A. There were side bridles and counterweights on that.

Q. How about the second wooden spooler?

A. The second wooden spooler was a little different than the first in the respect that it was bored first, then cut down through the middle and shaped as round as possible, with what we had to shape it with. The same clamps that were around the first one were around the second one, one on top and one on the bottom. The only difference was we cut this second one down through the middle after being bored. The first one, we put the line through it intact. It was just made as near round as possibly could be made from a square, 6x6.

Q. And otherwise, as to hanging and everything else, it was the same? [344]

A. Absolutely the same.

Q. You were familiar with the old chain spooler, weren't you? A. Yes, sir.

(Testimony of E. F. Prehoda.)

Q. Mr. Reed in his testimony stated that you got something in your eye from one of those, is that correct? A. That is correct, sir.

Q. And injured your eye?

A. That is why I am wearing glasses today.

Q. And do you recall how those chain spoolers were hung? A. Yes.

Q. How were they hung?

A. We used the chain spooler. Do you want a description of this chain?

Q. Yes.

A. We used there three to four links—it all depended on what job you might be on—of twelve-foot chain. It is about 2½ to 3 inches long in length of the chain link itself. We used three on each side. Say you would have seven altogether, counting your center link. The line went down through the center of the middle link. Then it extended over to both right and left to a weight, through a pulley, something similar to the way you have this structure here.

Q. When you say “this,” do you mean the counterweights [345] on either side?

A. On either side of center. Then we had a safety line which went usually on the first link, past the center of the line. The object of this was, in the event that this chain link would break—the one on the far side of the center line would never strike anybody unless, by chance, somebody was walking over there, but the one on the left-hand side would always strike the driller. He couldn't

(Testimony of E. F. Prehoda.)

get out of the way because the weight itself extends only up about a foot or 18 inches from the floor and, in the event that the chain would break, it would strike the driller. So that is why the safety line was installed on this chain. So, while you had one, you might just as well have both of them and be safe for anybody walking on the opposite side. So we had two lines.

Q. One on each side of the chain and at the center?

A. The central part; yes; the first link in from where the line traveled in the center line.

Q. Did you work on Belridge No. 20?

A. I did, sir.

Q. Were you a driller on that?

A. I was a driller.

Q. Do you recall using a spooler on that well?

A. I do.

Q. Will you describe the first spooler you used?

A. The first spooler we used was a clamp, a safety [346] clamp, that is used on a rotary hose, a six-inch rotary hose. This clamp was just a safety factor on a hose that has a line attached to the derrick so, in the event the hose would blow up, it couldn't drop down. We put this rubber inside and they clamped it together and then we put our ordinary guide, the same as we have on our chain assembly, on this clamp, with a rubber protector installed inside. We did not have it suspended.

Q. You let that run up and down, did you?

A. We wanted that to run up and down because

(Testimony of E. F. Prehoda.)

the discussion at that time was the more it rubbed the faster it would wear, and how much it would wear we did not know. So that was the finest way to find out. Due to dry lines, you would have a certain amount of friction and that friction would, naturally, wear this rubber. So, in letting it run up and down in the derrick, that was our only way of knowing.

Q. Did the friction on the line carry it up?

A. Sometimes it would and sometimes it would go up five and eight feet, just whipping.

Q. How long did you use that on Belridge 20?

A. We used that particular type to about the middle of June.

Mr. Joseph F. Westall: What year?

A. 1936.

Q. (By Mr. Caughey): What did you use [347] then?

A. Then we made one out of strap steel, which was a little bit thicker and it was a little bit wider, and we put the same type of rubber inside. This time we bored a hole through the back of this clamp and we inserted an Alemite job. The object of this Alemite job through the steel as well as through the rubber was to form a lubrication of the inside of this rubber to see if we could eliminate a friction, which was dry in the previous experiment.

Q. Did you put any side bridles on it?

A. We had the side bridles on just the same as on this one.

(Testimony of E. F. Prehoda.)

Q. Did you have any other lines on?

A. That is the extent of that line with the exception of the tail line we had down.

Q. Did you have any line at the top on that one?

A. I think we had our bridle affair just the same as on our previous wooden ones. That went through a loop around five to eight feet, on a bridle effect. Then it was fast on the seventh girt, or 45 feet.

Q. Was there any other spooler that was used on the Belridge 20 besides those two that you have described?

A. That is the only spooler we used on Belridge 20 at that particular time. This well was about to be completed as we were constructing the next type.

Q. And what do you refer to by "the next type"? [348]

A. The next type was the pipe effect which was slotted in the middle on both sides. It had three sets of three-quarter nuts, two on each side on the top, two in the middle and two on the bottom, making 12 in all. There was also a section cut out of the center of this pipe in order to get a squeezing effect or a friction against the rubbers used, of which there were three Bettis protectors. We squeezed this up and on the top side, about two inches down, we had an eye. This eye was originally a handle that we used in setting 7-inch slips in casing. We had nothing else to make an eye out of. The welder was there and we cut this off and welded this eye

(Testimony of E. F. Prehoda.)

in the top of the spooler, in the back. To that eye we attached a safety line. Then, on the——

Q. Just a second. Where was the other end of the safety line attached?

A. The other end of the safety line was attached 45 feet up in the derrick. That is 21 feet above the top of the spooler.

Q. Proceed.

A. Then, on the bottom was a bridle with a loose tail line which had the same safety effect of going up as the top one has coming down.

Q. Did you have any bridle on the top of that?

A. On the top of this pipe effect we had through this nut affair, that was the friction clamp—we had a bridle and [349] on this bridle we put a hay pulley. This hay pulley on the top had a casted eye. This casted eye wouldn't stand our safety inspection so we had to take this cast eye and, in place of it, put in a steel one. In that eye we inserted a rope. This rope went up 21 feet above the spooler itself, which was setting at 24 feet through a pulley hanging from the girt. That also had an eye removed, which also had a casting, and that had to be steel, and through this rope it went over the back side of the derrick to a counterbalance or weight about 10 inches above the engine house.

Q. That counterweight was on the outside of the derrick, was it?

A. On the outside of the derrick.

Q. What was the height of the loop?

(Testimony of E. F. Prehoda.)

A. Around five to eight feet.

Q. Did you vary that loop any?

A. We did because we didn't know how long or how short to make it. We started out with the first one only about three feet, that is, the loop was three feet from the center of the spooler to the top of the pulley. Then we finally got up to where it was around eight feet.

Q. Why did it work better at eight than three?

A. It seemed to be the logical place for the spooler to handle itself correctly.

Q. Do you mean to hang better?

A. To hang more in a perpendicular [350] manner.

Q. Where was that particular type used, that particular spooler?

A. That particular spooler was used over at Gibson 7. It was also moved from Gibson 7 onto Belridge 20 on the redrill job on this particular well.

Q. Were you on the re-drill job?

A. I was, sir.

Q. Do you recall when that re-drill job took place?

A. That took place in the last of November or into the last of December.

Mr. Joseph F. Westall: What year?

A. 1936.

Q. (By Mr. Caughey): And do you recall that definitely?

(Testimony of E. F. Prehoda.)

A. Yes, because Christmas Eve of 1936 I was swabbing Belridge 20 the second time.

Q. The first time it came in on July 31st?

A. In July 31, 1936, it came in the first time. We reconditioned this hole due to the fact that we had produced this well from what was known as the Top Wagon Wheel; in other words, the top zone of that area. They wanted to know whether or not we had a lower zone there that was productive. So they decided to kill this well, pull the liner and go back in and try and dig 18 feet of that lower zone to see if it was wet or dry. That is why we went into it the second time.

Q. Did you have anything to do with making this type [351] that you just talked about?

A. That is where I helped make the first type; yes, sir. The last one you are speaking about, with the three rubbers. I did; yes, sir.

Q. Did you see that in operation in the well?

A. I did. As a matter of fact, I used it the last time it was used, right on Belridge 20.

Q. Did it function to take the whipping out of the line? A. It did.

Q. Did it cause the line to spool properly on the drum?

A. It did. As a matter of fact, at the time we were using this three-rubber job, we were even contemplating going to four or more. We still even figured we might use six.

Q. But three was satisfactory?

(Testimony of E. F. Prehoda.)

A. Three was satisfactory, perfectly okay, and worked fine and was a success.

Q. Had you ever heard of Mr. Moss or anything about the Moss spooler up to that time?

A. No, sir; I had never heard of Mr. Moss.

Q. When did you first hear of Mr. Moss?

A. Right here in this court room.

Q. When did you first hear of a Patterson-Ballagh spooler? [352]

A. The first I heard of a Patterson-Ballagh spooler was I heard of it in the early part of the summer of 1937.

Q. And when did you first see one?

A. On September 2, 1937, at Rio Bravo, 1-34, Kern County.

Q. Was the well in operation when you saw it?

A. The well was 10,000 feet deep, sir.

Q. It had been drilling for some time?

A. Since March or April. I was in Kettleman Hills at the time.

Q. You came from Kettleman Hills over to that?

A. That is right, sir.

Q. And, when you came to the well, it was in place?

A. The line spooler was in operation.

Q. And how was it hung?

A. It was hung exactly like the last one we had at Belridge 20.

Q. With a counterweight?

A. With a counterweight coming from the back side of the derrick.

(Testimony of E. F. Prehoda.)

Q. As shown in this Exhibit C, this sketch?

A. That is right, sir.

Q. And what line, if any, was attached—strike that. I will show you a photograph which is in evidence as Defendants' Exhibit H. Will you please state whether the line [353] spooler you saw on September 2nd in any way resembled that line spooler?

A. Yes; that is exactly what it looked like.

Q. And what, if anything, was attached to the eye that is shown in the middle of Defendants' Exhibit H?

A. A $\frac{3}{8}$ flexible wire line.

Q. Was that a safety line?

A. That was a safety line, attached 21 feet above the spooler, the third girt above the spooler.

Q. Where was the weight of the spooler when that was suspended?

A. It was suspended on a counterweight.

Q. Have you seen any other Patterson-Ballagh spoolers suspended since that time?

A. Yes.

Q. Did you suspend them yourself?

A. Yes.

Q. And how have you suspended them?

A. More of an angle, from a pulley on the girt, to an area back across to the spooler itself, without a counterweight?

Q. Another means of suspension?

A. Another means of suspension.

Q. Did you have anything to do with the sus-

(Testimony of E. F. Prehoda.)

pending of the Patterson-Ballagh spooler in Rio Bravo? [354]

A. No; I didn't. It was in operation when I came there.

Q. In winding a wire on a drum, the thickness increases, of course, as you wind it up, doesn't it?

A. That is right, sir.

Q. So, as the thickness increases, that means that the position of the line coming down is thrown further into the center of the derrick, is that correct?

A. That is correct.

Q. How many thicknesses would there be on a drum?

A. That usually depends upon the height of your derrick. I would say in some instances probably $3\frac{1}{2}$; maybe 4.

Q. And what is the diameter of the wire that was used?

A. One inch at this particular time; an inch to an eighth on taller derricks.

Q. So three thicknesses would throw it out three inches and four thicknesses would throw it out four inches?

A. Yes, sir. It also depends on how many lines are run.

Q. Have you hung any Patterson-Ballagh protectors as shown in Exhibit H? Did you ever hang any of those yourself, with the eye in the middle?

A. I recall hanging one, I believe; but I wouldn't make a positive assertion on that. [355]

Q. You are not sure?

(Testimony of E. F. Prehoda.)

A. I am not sure.

Q. Mr. Prehoda, I show you Defendants' Exhibit D in this action and call your attention to the signature "E. F. Prehoda" which appears thereon. Is that your signature? A. That is, sir.

Q. And when did you place it on there?

A. I placed that on there some time in 1936. Just what the date was of that, I would have to go back and ascertain.

Q. Did Mr. Bishop sign at the same time you did? A. He did.

Q. And did you sign before a notary public at that time? A. No, sir; we didn't.

Q. Was it with reference to the drilling of that well when you placed your signature on there?

A. Yes, sir.

Q. When that was being drilled?

A. Yes, sir.

Q. And at the time you signed it, did you note the drawing and the description that was on it?

A. That I don't recall.

Q. Just above your signature?

A. That I don't recall. [356]

Q. Mr. Reed had previously described to you a line spooler, had he, and you had helped him build it? A. That is right, sir.

Q. You understood the purpose and function of it, did you? A. That is right, sir.

Mr. Caughey: That is all.

Mr. Joseph F. Westall: No cross-examination.

Mr. Caughey: Mr. Ballagh, please take the stand.

J. C. BALLAGH

called as a witness for the defendants, being heretofore duly sworn, testified further as follows:

The Clerk: Your name is J. C. Ballagh?

A. Yes, sir.

The Clerk: This witness has already been sworn.

Direct Examination

By Mr. Caughey:

Q. You are the same J. C. Ballagh who previously testified in this case? A. I am.

Q. And you have been sworn?

A. Yes, sir.

Q. Mr. Ballagh, I show you Defendant's Exhibit H in this case and ask you if you can identify it. A. Yes, sir. [357]

Q. What is it?

A. It is a wire line guide made by Patterson-Ballagh.

Q. When was that picture taken?

A. It was taken in 1936. I will have to refresh my memory to get the exact date. I know it was in 1936 and I know where it was taken.

Q. Where was it taken?

A. It was taken on the elevator of the Patterson-Ballagh factory.

Q. And where was that?

A. 1900 East 65th Street.

Q. The same place you are now?

(Testimony of J. C. Ballagh.)

A. Yes, sir.

Q. Who took the picture? A. I did.

Q. You said you would have to refresh your recollection. Have you some means of refreshing your recollection?

A. I have an index of the pictures and a diary. That is the index.

Q. In other words, Mr. Ballagh, you keep a record of films you take, so that you can check back and see when you took them, is that correct?

A. Yes, sir.

Q. I note on the back of this picture it says "590-10." Does that mean anything? Or [358] "594-10."

A. Yes; that is roll No. 594. That would be the roll number, 594, and the sixteenth picture on the frame. It is 594 over 10. That means the tenth frame.

Q. Have you that negative here available?

A. Yes, sir; this is it.

Q. And that is the roll in which the negative appears of that particular picture?

A. Yes, sir.

Q. And when was that particular picture taken?

A. On 6-27-1936.

Q. June 27, 1936? A. Yes, sir.

Q. And Patterson-Ballagh had manufactured the spooler as is shown in this picture, which is Exhibit H? A. Yes, sir.

Q. That is their manufacture?

A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. You were one of the original partners, were you not, in Patterson-Ballagh, when it was a co-partnership? A. Yes, sir.

Q. And one of the principal owners of the corporation? A. Yes, sir.

Q. I show you a group of documents, which are attached together, which apparently is on some document of the Patterson-Ballagh Corporation, Ltd. I will ask you if you can identify [359] it?

A. Yes, sir; it is a purchase order for a 16-inch wire line spooler, from the Reserve Oil and Gas Company, to which is attached a bill of lading, from the Oil Well Express Company, and a delivery ticket of Patterson-Ballagh Corporation, Ltd., and their invoice No. 892, to the same company.

Q. And what does that invoice cover?

A. It covers one of these wire line spoolers.

Q. When you say "these wire line spoolers," what do you mean?

A. Similar or the same as the one shown in the photograph.

Q. Exhibit H? A. Yes, sir.

Q. Do those documents show when that was shipped or sent to the Reserve Oil Company?

A. Yes, sir; it shows "7-15-1936."

Q. To what Reserve Oil Company well, if you know?

A. That is to the only well that they were drilling at that time, as far as I know. It is at the Grapevine, just over the Ridge Route as you

(Testimony of J. C. Ballagh.)

are going towards Bakersfield, on the east side of the road.

Q. To the right of the road as you are going to Bakersfield?

A. To the right of the road as you are going to Bakersfield. [360]

Q. And are these the original records of the Patterson-Ballagh Corporation——

A. Yes, sir.

Q. ——showing that sale? A. Yes, sir.

Q. And was that spooler actually delivered to the Reserve Oil Company? A. Yes, sir.

Mr. Caughey: The records identified by the witness and showing the transactions testified to are offered in evidence as Defendants' Exhibit I.

The Court: How many documents are there?

The Clerk: Five, your Honor; a purchase order, a bill of lading, a delivery ticket, an invoice—and what was the other document?

Mr. Joseph F. Westall: I have got one of them. Well, this is another one.

The Court: They may be received.

Q. (By Mr. Caughey): I show you another group of documents, which are attached together, and ask you if you can identify this particular group.

A. Yes, sir. It is a delivery ticket of the Patterson-Ballagh Corporation, Ltd., showing the delivery of one 32-inch cable spooler to the Shell Oil Company, followed by a delivery [361] ticket of the California Bettis Company, also of Los Angeles,

(Testimony of J. C. Ballagh.)

and a memorandum, in my handwriting, regarding the billing, and a purchase order of the Shell Oil Company for the purchase of the wire line spooler, and an invoice of the Patterson-Ballagh Corporation, Ltd., No. 1124, showing the invoicing of one 32-inch wire line spooler, dated November 5, 1936.

Q. I note, by reference to these documents, that the lower one, which is a blue sheet, is dated 7-22-36, and says, "Cable spooler taken out by J. C. Ballagh." Will you please explain the difference in time between 7-22-36 and the date of November 5, 1936, when the same was billed?

A. It was sold to the Shell Oil Company on an approval basis and they were to pay for it if they found it satisfactory; and, as soon as they accepted it, they gave us the purchase order for the spooler and we then billed it. We were not allowed to bill until we had received a purchase order.

Q. Does any of that group of documents show when the spooler was delivered?

A. Yes; the Shell Oil Company purchase order shows that the material was received on 7-16-36.

Q. And was the spooler that was referred to the same spooler shown in Exhibit H?

A. It was the same design and idea. It was made from the same identical pattern. I am not quite sure but that may not be the exact one but it was one exactly like it, if it wasn't [362]

Mr. Caughey: The documents identified by the witness, being purchase orders and invoices, are offered in evidence as Defendants' Exhibit J.

(Testimony of J. C. Ballagh.)

The Court: That may be received.

Q. (By Mr. Caughey): Mr. Ballagh, I note, in your handwriting and attached to that group and dated 8-27, some writing. When did you make that writing, if you recall?

A. I think I wrote it on that same date because I have the date of 8-27, and I always try and put the date on which I make a memorandum, and I would say that I wrote it on that date.

Q. What year?

A. That would be 8-27-1936.

Q. Did you ever visit the spooler that was put up at the Reserve Oil Company? A. Yes, sir.

Q. Did you ever take a picture of that spooler?

A. Yes, sir.

Q. Mr. Ballagh, were these sales to Shell Oil Company and the Reserve Oil Company the first sales that Patterson-Ballagh made of these spoolers?

A. Yes, sir; to the best of my recollection.

Q. Those were the first sales that were made up through August, is that correct?

A. Yes, sir. [363]

Q. I show you a photograph, showing a line spooler in position, and ask you if you can identify it?

A. Yes, sir; that is the spooler of the Reserve Oil and Gas Company.

Q. And who took the picture? A. I did.

Q. And, from your records, can you tell when that picture was taken?

(Testimony of J. C. Ballagh.)

A. Yes, sir; from my diary. I have the notation on the diary.

Q. Do you mean your personal diary?

A. Yes; my personal diary.

Q. This is a personal diary that you keep, a yearly personal diary, is it? A. Yes, sir.

Q. That you keep every year?

A. Yes, sir.

Q. And this is the one for the year 1936?

A. Yes, sir.

Mr. Joseph F. Westall: May I see the entry when you find it? A. Certainly.

Q. This certain picture was taken on August 5, 1937?

The Court: 1936?

A. Yes. [364]

Q. (By Mr. Joseph F. Westall): There is no indication in there what photograph it was or what well, is there? A. No.

Q. How do you fix that time?

A. I was en route home from a trip I had made to Northern California and I stopped the morning of August 4th, at Grass Valley, and I took a picture of this classmate of mine from college, with his children, and I stopped overnight just north of Fresno and I arrived in Los Angeles on August 5th and, as I passed by the property of the Reserve Oil and Gas, where they were drilling this well, I stopped and went over and took the pictures, and it is the next picture taken following the one I took of Jack Mann at Grass Valley.

(Testimony of J. C. Ballagh.)

Mr. Joseph F. Westall: Let me suggest this. There is nothing in this entry here that shows the facts testified. It must be remembered wholly by the witness' memory.

Mr. Caughey: It will be more than his memory if you will let me proceed.

Q. Have you the negative there——

A. Yes, sir.

Q. ——from which that print was made?

A. Yes, sir.

Q. And what is that frame number or roll number? A. 601-5. [365]

Q. I note on the back the figures "601-5." What is that?

A. That is roll 601 and the fifth frame in the roll

Q. And do you find the negative for that?

A. Yes, sir.

Q. Do you have it there with you?

A. This is the negative; yes, sir.

Q. Will you show it to the court?

A. Here is the negative and here is the contact print and those two frames in question.

Q. And how do the negatives on that roll run? I mean as we look at them. Which one was taken first?

A. They run in numerical order, with that number on the frame starting in with No. 1 and going through No. 7, and were taken in the order of their numbering.

(Testimony of J. C. Ballagh.)

Q. What is the first one, the first print that is shown on that?

A. The first print is a picture of Jack Mann and his son and so are the second, third and fourth; and the fifth, sixth and seventh are the three negatives of the wire line guide at the Reserve Oil and Gas Company.

Q. Where was that negative of Mr. Mann taken?

A. Up in Grass Valley.

Q. And when does your personal diary show that you visited Jack Mann at Grass Valley? [366]

A. I visited him on August 4th.

Q. Is that stated in your diary?

A. Yes, sir.

Q. Will you please show that to the court? And when were those entries in that diary made, Mr. Ballagh?

A. They were made at the same time, I think that same identical day. I kept my diary running constantly. I, as a rule, made the entries at night of what happened during the day.

Q. And you can state, then, positively, that that picture of the Reserve Oil Company well, showing the spooler, was taken on your trip back from Grass Valley? A. Yes, sir.

Q. And you were in Grass Valley when?

A. On August 4th I left there.

Q. And you came directly to Los Angeles?

A. Yes, sir.

Q. Does that correctly depict the way that the spooler was hung in the well? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. From the two hanging lines at the top, is that correct? A. Yes, sir; that is right.

Q. And with no lines attached to the middle eyes at all? [367] A. No, sir.

Mr. Caughey: The photograph identified by the witness is offered in evidence as Defendants' Exhibit K.

The Court: It may be received.

Q. (By Mr. Caughey): When you manufactured the spoolers which were sold to the Shell and to Reserve, did you manufacture them one at a time or did you manufacture a number?

A. After the initial first one we made, we made them in line of about 12; either 12 or 24.

Q. That is, you would cut that up——

A. We would make one cut on the pipe and then we would slot the full length of the pipe at once and we would weld them at one time. So the first ones we made were alike.

Q. And they were all made with two eyes, one on each side of the middle? A. Yes, sir.

Q. They all had two eyes?

A. No; one eye on each side.

Q. And bolted together as shown in the picture?

A. Yes, sir.

Q. They were not cast, were they?

A. No. Those were identical halves, made out of pipe that was slotted, and side bars welded and the side bars acted as wings that held the halves together.

(Testimony of J. C. Ballagh.)

Q. And you made that stock up, you say, and had it [368] available? A. Yes, sir.

Q. Did you sell very many spoolers during the remainder of 1936, or into 1937?

A. No; not many. I think maybe a dozen. I would say less than two dozen of them.

Q. Do you recall whether you made another batch or cut another batch up before you—strike that. Did you cut another batch up of the ones like are shown——

The Court: Did you say 1936 or 1937, that this number was sold?

Mr. Caughey: In 1936 and 1937; both 1936 and 1937.

The Court: He sold about a dozen or not more than two dozen?

A. Yes, sir; of this particular style.

Q. (By Mr. Caughey): As shown in Defendants' Exhibit H? A. Yes, sir.

Mr. Caughey: What was the question?

(Question read by reporter.)

Mr. Caughey: I will strike that out.

Q. Do you recall whether or not there was another batch made up in addition to the batch you have already testified to?

A. I think we made a second batch and then a third batch. I didn't spend much time in the shop manufacturing, [369] so I am not sure, but I am very sure we made more than this one batch. I think we made a second batch and very possibly a third batch.

(Testimony of J. C. Ballagh.)

Q. Will you state why the eye was put in the middle, Mr. Ballagh, on these particular spoolers?

A. It was to attach a safety line to the side of the derrick to keep the guide from dropping down in the event the hanging lines would break.

Q. What did you put these guides out primarily for on these spoolers? What was their object?

A. Their object was to stabilize the line and keep it from whipping.

Q. And did you send any instructions out with the earlier ones as to how they should be installed?

A. I don't believe we did; I don't think we did.

Q. When did you change the eye and put it at the top?

A. About 1937; I think in the middle of the next year.

Q. Of July?

A. Yes, sir; along in the summertime.

Q. And, when you put the eyes at the top, were they cast? A. They were castings; yes, sir.

Q. You made some castings, then?

A. Yes, sir.

Q. And where were the eyes placed in those castings? [370]

A. They were placed at the top and one of them half way to the middle and one at the middle.

Q. In other words, you had a middle eye and a top eye and then, half way in between the middle and the top, you had another eye?

A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. And was there a hanging line attached to the top eye? A. Yes, sir.

Q. And what was attached to the second eye, in between the top and the middle? A. Nothing.

Q. How about the eye that was actually in the middle?

A. There was one attached to that, also.

Q. Had you been in the field, Mr. Ballagh, frequently during 1936 and 1937?

A. Yes, sir; I was there a great deal of the time.

Q. Had you made any trips to the Mid-Continent? A. Yes, sir.

Q. Whereabouts in the Mid-Continent?

A. Oh, it was in West Texas, Oklahoma, South Texas and Louisiana and Arkansas and wherever they drilled oil wells in the Mid-Continent area.

Q. And you had experience while you were in the field with the spoolers, did you, that were [371] out? A. Yes, sir.

Q. From this experience, did you make any change in the position of the eye on the spooler?

A. Yes, sir; we moved the eye to the top and, when we came out, we used castings.

Q. Why did you do that?

A. Mainly for a safety reason. We found in operation that, with the single eye with one rope attached to it, there was too much movement up and down when the lines were started out as brand new, and the line would go quite a number of feet up and then it would come down, when the guide was first put and the spooler was being broken in.

(Testimony of J. C. Ballagh.)

Q. What was the clearance between the wire guide and the rubber, the hole in your rubber?

A. There was an inch and an eighth hole in the rubber and, when there was an inch line used, there was about a sixteenth of an inch on each side, provided it wasn't squeezed down too tightly when they put on the two side ears; and on the inch and eighth line there was no clearance at all.

Q. When you put that on the line, what happened?

A. There was so much friction that, when the line would run up, the guide would run up with it. It was also going very high either by the hanging line or the safety line, and then, when it would go on down, it would be carried down until the wear had taken place and had worn the guide [372] enough so that the guide would not travel up and down very much.

The Court: We will take a recess at this time.

(Short recess.)

Q. (By Mr. Caughey): I don't know, Mr. Ballagh, whether you had finished your answer or not. I think we had better have the question and answer read to be sure.

(Record read by reporter.)

A. I think that should be reversed there, where the guide went up on the wire.

Q. When you were out in the field, you saw some of these spoolers, did you, that were up?

A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. And did you talk to any of the operators?

A. Yes, sir.

Q. What did they tell you as to their operations?

A. They said they were very satisfactory for stopping the whip.

Q. Did they say anything as to how they were hung at all?

A. They said in many cases they were breaking the eye off—it was only a single eye—and they are not shipping them around the fields or sometimes, even when they were putting them up in the derrick, they would be breaking this eye. So they were putting on another eye. And I heard many [373] suggestions that we hang it from the top and put on two lines instead of the one that we had been using, because it had such a travel that the counterweights couldn't travel, within the limits that the counterweights should travel, without hitting the floor of the derrick.

Q. And, when you say two eyes, where would one of the eyes be?

A. They wanted to have another eye put up near the top. They said it hung better when hanging from the top.

Q. Was that the reason why you changed and made the castings with the eyes at the top?

A. That wasn't the primary reason. We made the castings because they were cheaper to manufacture and made a much better looking item.

Q. But you put the eyes at the top when you made the castings?

(Testimony of J. C. Ballagh.)

A. Yes, sir. We tried to incorporate in our devices various suggestions that were made in the field, that would make for better operation, and that was one of them.

Q. There have been some advertisements introduced here by the plaintiffs and you have identified some, I believe. I show you an advertisement which is Plaintiff's Exhibit 10-I, dated December 30, 1937. Does that show one of your cast spoolers?

A. Yes, sir. [374]

Q. Who gives the instructions or orders for making changes in the equipment, or who did at that time, at Patterson-Ballagh, such as making castings? Who gave those instructions?

A. It was as a result of a conference of myself and the factory, the factory superintendent, as to design and material, and no changes were made without my sanction.

Q. Without your approval? A. No, sir.

Q. Were you, at the date of this advertisement, making line spoolers such as shown in the advertisement? A. Yes, sir.

Q. And it is your testimony that it was some time in the summer of 1937, you began making line spoolers with the eyes at the top?

A. Yes, sir. That was our commercial adoption of the cast steel, in which those that left the factory had the eye at the top.

Q. And since that time you have continued to do so? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. Had you ever heard of Mr. Moss or the Moss spooler at that time? A. No, sir.

Q. How much later was it before you ever heard of them?

A. Oh, it was several years later; I think it was [375] probably around 1940. If I remember rightly, somebody told me that they had seen another guide which wasn't ours, that is, one that wasn't made by Patterson-Ballagh. I think it was about 1940, if I am not mistaken. It was a number of years after we had started.

Q. But you are sure that at the time you made this change it wasn't any suggestion made by Mr. Moss or anything that he did? A. No, sir.

Q. As you say, it was by people in the field and also in the Mid-Continent?

A. Both in the Mid-Continent and in California.

Q. And, you, of course, had seen the spooler hang in the Reserve Oil Well, in 1936?

A. Yes, sir; and it was hung at the top.

Q. Did you file a patent application on the first line spooler you made? A. Yes, sir.

Q. I show you a document entitled "U. S. Patent Office," and ask you if you can recognize that? I think Mr. Westall will stipulate that this is a receipt of the Patent Office.

Mr. Joseph F. Westall: That is correct but I would like to put the date down, and so forth.

Mr. Caughey: Yes. [376]

A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. And that shows the filing date of December 8, 1936, does it not? A. Yes, sir.

Mr. Joseph F. Westall: That was an application that was abandoned, was it not?

Mr. Caughey: That is right. I have the files, as a matter of fact, with identical drawings.

Mr. Joseph F. Westall: May I see that just a moment? You don't need to put it in evidence. I will stipulate that the drawings of this application are identical with the drawings of the Reed application as later filed.

Mr. Caughey: That is correct.

Mr. Joseph F. Westall: And we stipulate this was an abandoned application.

Mr. Caughey: That is correct. And I also can prove by evidence of my office, Mr. Westall, that Mr. Ballagh contacted us first relative to filing this application on November 14, 1936. We have our docket book.

Mr. Joseph F. Westall: Yes; and perhaps you need not put that in evidence because we can stipulate that this filing receipt of applicant, James C. Ballagh, for a line spooler, the \$30 filing fee and the specification, drawing and oath, were received by the Patent Office and it was filed December 8, 1936. [377]

Mr. Caughey: Yes; serial No. 114,777. And will you also stipulate, to avoid bringing my records up, that Mr. Ballagh contacted us, with reference to filing it, on November 14, 1936?

Mr. Joseph F. Westall: I will stipulate to it be-

(Testimony of J. C. Ballagh.)

cause it is reasonable for an attorney to have some time to draw up an application.

The Court: Do I understand that the application that was filed by Mr. Reed, with the drawing thereon, is a duplicate of the application that was filed by Mr. Ballagh?

Mr. Joseph F. Westall: An exact duplicate.

The Court: The entire set-up?

Mr. Caughey: That is correct.

Mr. Joseph F. Westall: Hanging in the middle.

The Court: And the application as well?

Mr. Caughey: The application as well, as a matter of fact.

Mr. Joseph F. Westall: It is not material whether it is or not.

Mr. Caughey: It is, as a matter of fact.

Q. Did you know at the time that you filed this application that Mr. Reed had made a spooler such as he described? A. No, sir.

Q. And did he come down to see you about it?

A. Yes, sir. [378]

Q. And convinced you that he was the first inventor? A. Yes, sir.

Q. As a matter of fact, we had a conference, in my office, about it, didn't we? A. Yes.

Q. And he told us what he had done?

A. Yes, sir.

Q. And then you made a deal with him, is that correct? A. Yes, sir.

Q. I show you an agreement, dated May 10, 1937—

(Testimony of J. C. Ballagh.)

Mr. Joseph F. Westall: Of course, you can put it in evidence, but——

Mr. Caughey: I don't want to put it in. You have already agreed that he was operating under the license. So it isn't necessary to put it in as far as I am concerned. It is just to fix the date of the agreement as May 10, 1937.

Mr. Joseph F. Westall: Yes.

Q. (By Mr. Caughey): Mr. Ballagh, does it make any difference insofar as the spooling of the line is concerned whether there is any line at the top or line at the bottom, just so that there is sufficient with counterweights to hold it in place?

A. That is correct; provided there are ample counterweights to counterbalance the weight of the guide itself; provided the wear is taking place enough so that the line does [379] not stick in the guide.

Q. In other words, so that it is burned in so that there is sufficient clearance? A. Yes, sir.

Q. Then, actually, you wouldn't need any line so far as the spooling is concerned, either an upper line or a lower line?

A. Yes, sir. I have seen quite a number of them operating without any hanging line or safety line.

Q. You have? A. Yes, sir.

Q. In the field, do you mean?

A. Yes, sir; I have seen them in the field.

Q. Are any of the old or first spoolers made still in the field?

A. There are a few of them still in service and,

(Testimony of J. C. Ballagh.)

as long as they were operating satisfactorily, the operators just haven't changed to the new style.

Q. Do you pick them up once in a while?

A. Whenever we see one, we have a trade-in price we have, and we try to sell them the new design.

Q. If there wasn't any hanging line at the top or any hanging line at the bottom and, particularly, the hanging line at the top, there would be a certain sag, would there not, if those lines were not used? [380]

A. Yes; regardless of the weight, there would be a certain amount of sag.

Q. And regardless of the counterweight?

A. Regardless of the counterweight.

Q. But that wouldn't affect the spooling—

A. No; the spooling is caused by a large and sufficient weight to stop the whip.

Q. How are you at present hanging the spoolers?

A. We recommend they be hung from the top.

Q. In what manner?

A. In the very latest design we have, we hang them with two hanging lines from the two sides.

Q. Will you explain that a little more clearly? I don't believe the court or I, either one, understand it.

A. There is one line on each side, that goes up—

Q. With reference to the model here, will you explain it?

(Testimony of J. C. Ballagh.)

A. —at the upperside, in a line that is parallel with the side of the derrick.

Q. One on each side?

A. One on each side. Over that side there would be an ear and from each ear there would be a line that goes upward to a common meeting place.

Q. As I understand your testimony, close to the upper part of the spooler? [381] A. Yes, sir.

Q. There is an eye on each side?

A. Yes, sir.

Q. And you have a line going up? A. Yes.

Q. And then up here somewhere the line meets?

A. Yes, sir.

Q. And then you have another line——

A. Another line goes into the derrick itself.

The Court: Is there a loop?

Mr. Caughey: This is a loop, just the same as the loop that Mr. Reed testified to.

Q. And how long have you been using that loop, Mr. Ballagh?

A. I think off and on for about a couple of years; not entirely but on a number of them until we were sure that that was the best method of hanging.

Q. It was a better method of hanging than hanging the line at the top? A. Yes, sir.

Q. You found that out? A. Yes, sir.

Q. What sizes of spooler do you and, when I say “you,” I mean the Patterson-Ballagh Corporation or the Patterson-Ballagh Division of Byron

(Testimony of J. C. Ballagh.)

Jackson,—which ones do you [382] manufacture?

A. They are in three sizes, the two-section with two refills, one a four-section with four refills, and one a six-section with six refills, each refill being eight inches long.

Q. And those refills are made of rubber?

A. Yes, sir.

Q. That would make an overall length of your two-section spooler of what length?

A. Sixteen inches.

Q. And of your four?

A. Thirty-two inches.

Q. And of your six?

A. Forty-eight inches.

Q. And were you selling them in that length in 1936?

A. We were selling the four-section and the two-section.

Q. Is the rubber longer than the housing in these particular spoolers?

A. Yes, sir; there are approximately two inches of overhang of rubber from each end of the guide.

Q. On one each of the styles?

A. On each one of the three styles.

Q. So you would have to deduct about four inches to get the overall length of the shell, is that right? [383]

A. Yes, sir; of the housing.

The Court: I didn't quite understand. Did you say you were making two sizes?

Mr. Caughey: Two sizes in 1936, and three sizes at the present time.

(Testimony of J. C. Ballagh.)

A. That is, of the rubber.

Q. And nothing to do with the casing?

Mr. Caughey: No. Sections refer to the rubber.

Q. When did you start making the three-section, if you recall, Mr. Ballagh?

A. We didn't make a three-section.

Q. I mean a six-section.

A. I think that was made in 1937, in the latter part of 1937. I would have to refresh my memory on it.

Q. You don't recall making any of those before you began casting?

A. No, sir.

Q. What is the outside diameter of the rubber inserts that you use?

A. Five inches.

Q. And what is the diameter of the shell?

A. The shell is five inches inside diameter.

Q. How thick is the shell?

A. On the first ones that were made, it was just the thickness of the five-inch pipe. It was right about a quarter [384] of an inch.

Q. And what are the present ones?

A. The present ones don't have a uniform thickness because they are curled to make them weigh less, and with a rib in the center. So there is not a uniform cross-section.

Q. And when you began placing the eye at the top, where was that eye placed with respect—where was it placed on the shell?

A. It was placed in the middle of the half on the—the inside half. The shells were made in two halves, one for the front and one for the back, and

(Testimony of J. C. Ballagh.)

by the "back" we mean the one that was closest to the derrick, and it was on the back half we had the three eyes.

Q. And at the top?

A. At the top and at the middle and half way up to the top, when the hanging line was attached.

Q. How far would you say that hanging line was from the rope itself that went through the center of the insert?

A. About four inches from the center of the rope, four to four and a half inches. I would have to consult the drawing.

Q. Four to four and a half inches?

A. I would guess that to be about what it would be. It might be six inches.

Q. And that was the same for all sizes? [385]

A. Yes.

Q. The Patterson-Ballagh Corporation didn't actually install any of these in a well, did they, Mr. Ballagh?

A. No, sir. We have sold them and the customer's crew puts them up.

Q. You sold the guide and the counterweights?

A. Well, at the very first, we didn't sell the counterweights or the hayfork pulleys.

Q. Those hayfork pulleys are the pulleys over which the rope goes?

A. On the side; yes, sir.

Q. You didn't sell those at first but you do at the present time?

A. No, sir; but we do now.

Q. Did you contact Mr. Moss or did he contact you in connection with this litigation?

(Testimony of J. C. Ballagh.)

A. Yes, sir.

Q. Do you recall the date?

A. No; I don't. I can't say without refreshing my memory in some manner.

Q. I show you a letter that has been introduced in evidence and which it was stipulated that you wrote. Will you please read that?

A. "Mr. P. M. Moss, 1466 Lewis Avenue, Long Beach, California. Dear Mr. Moss: I have talked with my [386] associates relative to the purchase of your patent. Due to the war situation and its effect upon the rubber business and the oil business, we have decided against making any commitments of this kind at the present time. When the war situation clears up, we might be in a better position to talk with you about this. Yours very truly, J. C. Ballagh, Secretary." Dated at Los Angeles, March 24, 1942.

Q. Did you write it? A. Yes, sir.

Q. Did Mr. Moss contact you after that date?

A. Yes, sir.

Q. How soon after that date?

A. Oh, I can't recall. I think it was some little time after that. I can't recall the date without some reference to correspondence at that time.

Q. Was it in connection with a possible settlement of the case? A. Yes, sir.

Q. And what did you tell him?

A. I told him that I saw no reason why we would violate a patent and I told him, "If you will get the file wrapper on your patent and let us have

(Testimony of J. C. Ballagh.)

the file wrapper and let our attorney study it," I would either make a proposition to buy the patent or take a license out under it or suspend operations, depending upon the attorney's advice. [387]

Q. Are you sure that wasn't before the date of this letter?

A. I think it was after that some considerable time.

Q. In other words, if he could convince you that the patent was valid, and if your attorneys advised you that you were infringing, that, if you could make a satisfactory deal, you would?

A. Yes, sir.

Q. And that was the end of it?

A. That is the last I saw of him until we went into this hearing.

Q. And you secured the advice of your attorneys that you shouldn't make a deal?

A. Yes, sir; I immediately contacted your firm.

Mr. Caughey: That is all.

Cross-Examination

By Mr. Joseph F. Westall:

Q. Mr. Ballagh, you have stated that you thought it was some time during the summer of the year 1937, that you first put the eye at the top. I do not believe you gave the date very accurately. Did you think it was July and August or August?

A. I think it was in the summer. I am quite sure it was during the summer but I haven't—

(Testimony of J. C. Ballagh.)

Q. You are relying upon your unaided memory? [388] A. I am as to a date.

Q. Maybe this might refresh your recollection. I show you Plaintiffs' Exhibit No. 25, an advertisement of the Patterson-Ballagh Corporation, page 71 of the Oil and Gas Journal, dated October 21st, and ask you if that refreshes your recollection in any way.

A. Yes, sir; I remember the advertisement extremely well.

Q. You do? A. Yes, sir.

Q. So that at that late date you were still advertising hanging from the middle, were you not?

A. This cut is upside down.

Q. That is what Mrs. Moss testified.

Mr. Caughey: There is no question about that.

Q. (By Mr. Joseph F. Westall): There is no question about it being upside down because you wouldn't have a hanging line otherwise. That was when you first started advertising the putting of the line, the hanging line, at the top, wasn't it?

A. I don't remember the date.

Q. I think the record will show that was when you first started.

The Court: What is the date of that ad?

Mr. Joseph F. Westall: It is October 21, 1937. That [389] was the first notice that Mr. Moss had that they were infringing his patent, not very long before its issuance.

Mr. Caughey: You say not long before its issuance?

(Testimony of J. C. Ballagh.)

Mr. Joseph F. Westall: I mean the filing of his application, which was January 21, 1938, which is a few months before.

Q. And this ad that I now show you of a page of the Oil and Gas Journal, page 86, dated December 30, 1937, is the next ad you got out showing the hanging from the top, is it not?

A. I don't know that it is the next ad but that shows it hanging from the top.

Q. Yes. Well, that is the next ad, as we have shown.

The Court: Twenty-five is hanging from the top also?

Mr. Joseph F. Westall: Twenty-five is hanging from the top also.

The Court: Was the one dated October 21, 1937, hung from the top?

Mr. Joseph F. Westall: No. Well, yes. The one of October 21st was hung from the top. That is the upside down one.

The Court: That was the first one?

Mr. Joseph F. Westall: Yes; that was the first one.

The Court: That shows the hanging from the top?

Mr. Joseph F. Westall: Yes. [390]

The Court: And the second one is December 30, 1937?

Mr. Joseph F. Westall: Yes, sir; when they continued hanging from the top.

(Testimony of J. C. Ballagh.)

The Court: What is the number of that exhibit?

The Clerk: The first one is 25 and the second one is 26.

Q. (By Mr. Joseph F. Westall): The contract that counsel referred to shows 10 per cent royalty on rubbers. Could you say approximately how much royalty that amounts to per month on an average? A. I have no way——

Mr. Caughey: I object to that. That is immaterial. I don't see that it has any materiality at all in this case.

The Court: That is for later consideration in the event——

Mr. Caughey: Yes.

Mr. Joseph F. Westall: Yes.

Q. Can you state that?

Mr. Caughey: I renew my objection.

A. I have no records to substantiate that.

Q. (By Mr. Joseph F. Westall): Do you know——

The Court: Just a moment; there has been an objection. That would be a matter of computation, would it not, in the event you were successful in this matter?

Mr. Joseph F. Westall: Yes. [391]

The Court: At the present time I don't think it is material. Is it?

Mr. Joseph F. Westall: It may not be of great materiality but I wanted to get it in the record.

Q. You said you contacted Mr. Moss some time

(Testimony of J. C. Ballagh.)

after the date of the letter which you read from the stand. What is the date of that letter?

Mr. Caughey: I don't know whether he said he contacted him or Mr. Moss contacted Mr. Ballagh. I wasn't sure about that, if you want to bring it out.

The Court: Well, they contacted each other.

Mr. Caughey: Yes; I think Mr. Moss came down there.

Q. (By Mr. Joseph F. Westall): The letter is dated March 24, 1942. And you say that either he contacted you or you contacted him. Did he call at the office? A. Yes, sir.

Q. You had a talk with him? A. Yes, sir.

Q. And who was present at that conversation?

A. I think some attorney that was from Long Beach.

Q. Possibly his attorney?

A. I think it was; I wouldn't say.

Q. Could you say whether it was a month or a year or what? Could you give any approximation of that time that you contacted him? [392]

A. Oh, I think it would be at least a year. It might have been more than that. I know it was a considerable time. I can't recall the date.

Q. It might have been somewhere in the middle of 1943, for all you know?

A. It might have. I can't recall the date.

Mr. Joseph F. Westall: I believe that is all, Mr. Ballagh.

(Testimony of J. C. Ballagh.)

Redirect Examination

By Mr. Caughey:

Q. Mr. Ballagh, relative to the advertisements that were shown to you, it is a fact, isn't it, that the copies of those advertisements have to be sent in some time prior to the date of issue?

A. Yes; it takes a number of months to get the cuts made and get the copy approved.

Q. So that, if you had something appearing in the Oil and Gas Journal in October, it would have had to have been sent in some time before?

A. It may have been prepared in July, or June even.

Q. And that was prepared by your advertising agents?

A. Yes, sir.

Q. You supplied them with that material?

A. Yes.

Mr. Caughey: That is all. [393]

Mr. Joseph F. Westall: That is all.

The Court: As a matter of general information, were you able to manufacture all of these implements during the war?

A. Yes, sir; but only in a very limited quantity because we were allocated in the amount of steel we could get and then we were allocated in the amount of rubber, and, for a number of years, we were cut off entirely on the rubber and we went to a synthetic rubber. But that was very unsatisfactory for that purpose. We made them all during the war,

(Testimony of J. C. Ballagh.)

though, because they were so valuable to the operators who wanted them.

Mr. Caughey: That is all, Mr. Ballagh. Mr. Hambly.

ALLEN E. HAMBLY

a witness for the defendants, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

A. Allen E. Hambly.

Direct Examination

By Mr. Caughey:

Q. Where do you reside, Mr. Hambly?

A. 2544 Cudahy Street, Huntington Park, California.

Q. What is your occupation?

A. I am a patent attorney for the Byron Jackson Company.

Q. How long have you been employed by that concern? [394]

A. Since October, 1937.

Q. Have you read the Moss Patent in Suit?

A. Yes; I have.

Q. And you are familiar with the drawings shown therein?

A. Yes.

Q. Have you looked for the dimensions of drillings rigs of 122 feet, for example?

A. Yes.

Q. And what did you find those dimensions to be?

Mr. Joseph F. Westall: We object to that as, obviously, hearsay. He went out in the oil fields

(Testimony of Allen E. Hambly.)

and, by hearsay, he thinks he knows. He is not qualified to state the height of those rigs and, furthermore, it is totally irrelevant in the issues of the case.

Mr. Caughey: I will show it isn't.

Mr. Joseph F. Westall: I think the witnesses who have been on the stand have repeatedly testified, the ones that were experienced, as to the heights of these rigs, and it is cumulative also.

Mr. Caughey: I will admit there is testimony in that a 122-foot rig has a base of 24 feet square and a height across the top of 5 feet 6.

The Court: There is evidence to that effect, I think.

Mr. Joseph F. Westall: Yes; there is evidence to that effect. [395]

Q. (By Mr. Caughey): Have you made any drawings of a rig based on those figures, Mr. Hambly?

A. I had a drawing made under my direction.

Q. Under your supervision? A. Yes, sir.

Q. And for the purpose of showing what?

A. For the purpose of showing, first, the inclination of the side of the derrick with respect to the vertical and showing the inclination of the drilling line which extends from the crown block down to the draw works drum.

Q. Is this the drawing that you referred to?

A. Yes; that is the one.

Q. With reference to that drawing, Figure 1,

(Testimony of Allen E. Hambly.)

you show the height of the derrick to be 122 feet, is that correct, scaled down?

A. That is the height on the slant of the derrick itself. It is not the vertical height. Those derricks are measured according to A.P.I. specifications, which are measured on the incline because that is the easiest way to measure them, and these derricks or the dimensions are specified by the American Petroleum Institute specifications, and a 122-foot derrick is 122 feet high on a slant and has a 24-foot square base inside measurement and a five-foot six-inch what they call a water table opening, which is the inside measurement at the top of the derrick, and five-feet six on the side. [396]

Mr. Joseph F. Westall: We move to strike out the answer as, obviously, hearsay and the witness is not qualified to state, not being a skilled man and, consequently, his statements are pure hearsay.

The Court: I don't think you have qualified him. All we have so far is he is a patent attorney for Byron Jackson but as to his experience in this particular endeavor I haven't heard any testimony along that line.

Mr. Caughey: As a matter of fact, we don't need it, your Honor. All I want to have the witness describe is what is on the drawing, which will be sufficient as far as I am concerned.

Q. You say that Figure 1 of the drawing shows a derrick which is 122 feet in height, measured along the outside of the derrick?

A. That is right.

(Testimony of Allen E. Hambly.)

Q. And that is scaled down to what? Is there a scale there?

A. A scale of a quarter inch equals one foot.

Q. You show a dotted line coming down from the top. Will you please state what that dotted line is represented to be?

A. That dotted line, in red ink, is designated, by reference numeral "2," as a drilling line.

Q. And that goes down to a drum, does it, on the [397] derrick floor? A. That is right.

Q. Which is shown as a drum, designated as a drum, by reference numeral "3"? A. Yes.

Q. You also represented a round circle at the top of the derrick. What is that represented to be?

A. That represents a shiv on the crown block, over which the line travels after reaching the top of the derrick from the drum.

Q. And that line comes off from the crown block, according to the drawing, how far from the side of the derrick?

Mr. Joseph F. Westall: We object to that and also to those dimensions as totally irrelevant to the case. This patent does not cover dimensions. No patent covers dimensions. It is entirely outside any of the issues of the case and I can't see any relevancy to it whatsoever.

The Court: Will you make a statement into the record of what your offer of proof is?

Mr. Caughey: Yes. My offer of proof is I want to show the angle of inclination of the drilling line from the vertical as it is in the well that has been

(Testimony of Allen E. Hambly.)

described, a 122-foot derrick. I will also show, by other drawings on the sheet, that, if a spooler is hung perpendicularly, it would therefore only be four degrees off of the line, off of the vertical. So, [398] therefore, there could only be four degrees difference if the spooler hung vertically between that and the line which would pass through it, even if it was free to hang normally. And then we also want to show, by reference to the drawing and in accordance with the measurements given by Mr. Ballagh in his testimony, that the angle at which the Patterson-Ballagh line actually hangs is more of an angle than it would be if it was hanging at the vertical, and I think that is very pertinent testimony in view of the fact we have in evidence here photographs and testimony showing that there are many spoolers that have hung from the top straight down, and I think that is very pertinent evidence in this case.

Mr. Joseph F. Westall: The Moss patent doesn't show that. We are suing on the Moss patent, and all data that counsel has mentioned and everything in his statement I say is totally irrelevant to the claims in suit.

Mr. Caughey: The Moss patent says you have got to hang so that the spooler will be in absolute accord with the drilling line through it.

The Court: Will you refer to the patent?

Mr. Caughey: Yes, sir. Referring to Claim 2 of the Moss patent, which is the claim in issue, it says, "A draw works drum line controller body

(Testimony of Allen E. Hambly.)

having an elongate, line receiving bore, a pair of opposite lateral control devices each including parts diverging toward the opposite ends of and [399] connected to said body to stabilize it against vibration on its minor axis in the plane of said devices, and a suspension means connected to said body at a point eccentric to the major axis and adjacent to one end of the body to support the body in normal position with the bore substantially parallel and contiguous to the line for reception thereof substantially without load of the body on the line when this is in a vertical plane transverse to the axis of the draw works drum.”

In other words, the claim says that the line should be so hung that this spooler will lie along the wire rope that runs through it so that it will take an angle of inclination so that it will run along that line.

The Court: “Substantially,” he says. And, of course, no one can get it exact, but they will, naturally, try, in hanging it, to get it as exactly as they can.

Mr. Caughey: Mr. Moss stated in his deposition that it was two or three degrees off.

Mr. Joseph F. Westall: That is all, “substantially.” You can’t get it exactly right.

Mr. Caughey: There is no definition of “substantially” in the patent.

Mr. Joseph F. Westall: That doesn’t make any difference. It is a word of common meaning. It is obvious they try to get it as close to that as possible.

(Testimony of Allen E. Hambly.)

But that is a matter [400] of no importance at all and this exhibit and this testimony is not helping to solve it.

The Court: What do you claim is the significance of this particular testimony?

Mr. Caughey: I claim the significance of it is to show that the——

The Court: Remember, I am a layman now, and tell me in plain language.

Mr. Caughey: I will try and do the best I can. I am trying to show that, when you have a drilling line, in ordinary practice, running from the top of the crown block and winding around a drum on the floor, the angle of inclination, the included angle from the vertical of that line, is about four degrees. That is all it is off center. In other words, if you let a line hang plumb down to the floor, a straight line, and you take this other line that goes around the drum and you measure the included angle in between the two, it will be four degrees. That is all it is.

The Court: Then what?

Mr. Caughey: Then, I want to show that, if you hang a spooler, just let it hang freely, on the wire line guide, hang it so that it would tend to hang perpendicularly from the top——

The Court: When you say “freely,” how do you mean?

Mr. Caughey: Just to let it hang straight down. That, [401] if you threaded the wire line through that, the wire line would only be four degrees off

(Testimony of Allen E. Hambly.)

of it; in other words, it would be the same included angle; because the spooler would represent the same rope that you dropped down straight from the crown block to the center of the floor, and the spooler dropping straight down could only be just four degrees off, as it would be if you dropped a straight line down from the crown block to the center of the floor.

Mr. Joseph F. Westall: Let me ask you this. Are you criticizing the showing or the disclosure of the Moss patent or the Reed patent? Doesn't what you say apply to the Reed patent disclosure?

Mr. Caughey: I have got nothing to do with the Reed patent disclosure. That isn't in issue.

Mr. Joseph F. Westall: Oh, yes; it is. You are operating under the Reed patent until you change your hanging line.

Mr. Caughey: You are charging us with infringement. Therefore, when you use, as the Reserve Oil Company did in that photograph,—when they hold a hanging line at the top and let it drop straight down there substantially contiguous to the line, that goes through it just the same as it says in that claim. They are only four degrees off. Mr. Moss in his deposition said they had varied two or three degrees. The other drawings on here give the dimension of the Patterson-Ballagh spooler and show where it is attached to the eye and [402] shows where it is attached up on the girt, to show the included angle of inclination that it would have, in other words, the same included angle I am talk-

(Testimony of Allen E. Hambly.)

ing about. And I think I can illustrate that better by just taking a pencil——

Mr. Joseph F. Westall: I might say this if you will permit me. You will remember that Mr. Moss said that he didn't measure it at all but he said that whatever the angle was was immaterial; that he didn't measure it.

Mr. Caughey: Oh, no. I asked him whether that angle was important and he said it was very important.

Mr. Joseph F. Westall: It is very important but whether it is two, three, four or five degrees is not important.

Mr. Caughey: Would you say ten degrees is "substantial"?

Mr. Joseph F. Westall: The angle is important but not the number of degrees.

Mr. Caughey: I wanted to show what was wrong with this patent when I read that case at the start; that this patent has to be precise as to the language when you are talking about where the invention resides. That is another reason why I am putting this particular document in. When I catch the pen like this and catch it like that and let it hang free, it gives a certain inclination. If I held it up that way, it would hang straight down. If I held it on that side, it would incline the other way. The further out I hold [403] it here, the more angle it would take. Now, I am showing by this particular document just exactly the angle that the Patterson-Ballagh would take if hung in that manner, in the

(Testimony of Allen E. Hambly.)

manner that it is supposed to be hung by the instructions given.

The Court: Do you mean from the center?

Mr. Caughey: Yes, sir. And that is very important in this case. This is from the top eye. There is no question of infringement from the center eye.

Mr. Joseph F. Westall: Oh, no; you can use the center eye.

Mr. Caughey: We are showing, by hanging at the top eye, the angle of inclination that spooler would take. Of course, if the line is through it, it has to take the same angle along the lines, but the reason is to show the degree of pressure there would be on there, the angle it would be trying to assume all the time, because any freely hanging body tends to assume a vertical position but, if you hang it at one side, it tends to assume a different position from the vertical. And we are maintaining that the way that Patterson-Ballagh hang this is not so it is contiguous to this line because we will show it is 10 degrees off in some instances. I think that is very important evidence. Mr. Westall wouldn't go so far as to say that 10 degrees was substantial or not. I say that is very important evidence, in [404] fact, I think some of the most important in this case.

Mr. Joseph F. Westall: I don't think it is at all material. Patterson-Ballagh don't put these things up. They give instructions as to how to put them up. And how will they be put up if the operator

(Testimony of Allen E. Hambly.)

or user uses common sense? They will put it up as near as they can to make that line straight so there won't be any wear on the bearings.

Mr. Caughey: Are you saying we sell them and the operator puts them up wrong?

Mr. Joseph F. Westall: You give your instructions, by showing them, as to how they are to be hung.

Mr. Caughey: Are you saying they don't follow the instructions given?

Mr. Joseph F. Westall: They hang them up this way and it depends on whether they hang it from one girt or from the other and they don't figure just how many degrees this is or that.

Mr. Caughey: Maybe they don't but we give certain instructions. I think the argument has been enough to establish and to show you it is quite important on the issues here, may your Honor please. We haven't argued this case yet or briefed it but I will assure you this evidence is very important not only on the question of infringement but also on the question of validity.

The Court: I would like to know a little more about that [405] situation before I rule on this particular evidence. This is the first time you have presented this particular phase of this case.

Mr. Caughey: Yes. I mean I didn't assume we were going to argue it now.

The Court: No. But I don't think I get the full significance of this particular phase of the controversy.

(Testimony of Allen E. Hambly.)

Mr. Joseph F. Westall: I don't, either, your Honor.

The Court: And I would like to know more about it. I would like to know just what relative connection it has with what is the real issue in this case.

Mr. Caughey: Mr. Westall has stated that the invention in this Moss patent and the contribution to the art resided in putting the hanging line at the top so that the spooler would hang along in the same angle of inclination as the wire line, so that there wouldn't be any friction on the line.

The Court: Is that your contention, Mr. Westall?

Mr. Joseph F. Westall: My contention is——

The Court: You are quoting now from the specification, are you?

Mr. Caughey: No; I am quoting just precisely what Mr. Westall said in his opening statement.

Mr. Joseph F. Westall: If I made any statement "exactly," of course, I meant that the claim was infringed by "substantially" being so. Nobody could say that it was exactly in [406] line and the claim doesn't so say.

The Court: What does the claim say? I mean how accurate is your statement as compared to what the claim is?

Mr. Caughey: There is nothing in the patent that shows how many degrees it can be off and how substantial it is.

Mr. Joseph F. Westall: He wasn't required by

(Testimony of Allen E. Hambly.)

the Patent Office to limit it and, furthermore, counsel tried to claim the same thing for Mr. Reed and copied one of our claims in the interference and used the same language. He used the claims of Moss and tried to get an interference in the case.

The Court: Let's take one step further. Just consider that I am inexperienced in this art here. Will you carry it along and show me the significance of your contention, so I will be fully advised?

Mr. Caughey: We will throw the word "substantial" in as the claim. With that word in, will you agree with my statement?

Mr. Joseph F. Westall: Yes. I want to stick to the claim.

Mr. Caughey: There is no definition of "substantial" in the claim. So we will throw that in. Now, we have in evidence in this case testimony to the effect that spoolers which meet every element of this claim, every element with the possible exception of that hung "substantially"—they [407] meet every other element of the claim. I don't think Mr. Westall can deny that fact.

Mr. Joseph F. Westall: They meet exactly all of the elements of the claim, including the "substantial" also.

Mr. Caughey: I say I don't believe you can deny that, with the exception of hanging the line at the top, the spoolers that were put out by Patterson-Ballagh and which have been described in evidence here meet all of the other elements of the claim.

Mr. Joseph F. Westall: They meet all of the

(Testimony of Allen E. Hambly.)

elements of the claim, yes, without any exception.

Mr. Caughey: That is fine; I agree with you, too. I agree with you perfectly.

Mr. Joseph F. Westall: Then that settles the question of infringement right now.

Mr. Caughey: No, because the ones I am referring to are the ones we put out as prior art. We put in evidence in this case a photograph, identified by the witness, that was hung in the Reserve Company well, and I think your Honor will remember the photograph, a spooler which is elongated, which has side bridles, which has weights on it to hold it up, and which has rubber bearings in it, which is a Patterson-Ballagh spooler, and it has every one of the elements of claim 2, as I say, with the possible exception of the controverted element, the question of how you hang the line. In the [408] Moss patent he shows the line hung not at the top of the center but he shows it at the side, from a ring, which would, naturally, cause it to assume a position off of the vertical.

The Court: You have already illustrated that with a pen.

Mr. Caughey: That is right, but, when you hang it from two straight lines from the top, it would, naturally, attempt to assume a vertical position. Isn't that correct?

Mr. Joseph F. Westall: Now,—

Mr. Caughey: Isn't that correct?

Mr. Joseph F. Westall: It may be correct that way.

(Testimony of Allen E. Hambly.)

Mr. Caughey: Now, if you please, the result is this is too late and not prior. Although you have the burden of proof, you haven't completely shown that structure. So we have the structure here which is hanging from the top because you will note that there are no lines attached to these eyes in the middle, no lines at all. It is hanging only from the top and suspended solely from the top by those two lines going up, from the top, which would cause the spooler to hang vertically. Now, if a line is threaded through that which is off of the vertical, there would be some friction, without question. The line which is threaded through it, which we will show and which the ordinary derrick has, approximately that derrick, is about four degrees off of the vertical. So that the included angle that you would have between what this [409] spooler would be if it was hung straight, vertical, and what it is when it is hung along the wire line, is a four degree included angle. That is all it could be. Now, the question is whether or not it would be invention for Mr. Moss to hang it at the side and get a two or three degree angle when you can hang it at the top to get a four degree angle. And, furthermore, Mr. Westall won't say what "substantial" means. He says it might be up to 10 degrees. So I say it is very pertinent, upon the question of whether there is any invention involved here, to show your Honor clearly by this diagram and by this representation just what the angles are here and what we are talking about.

(Testimony of Allen E. Hambly.)

Furthermore, upon the question of infringement, it is important to show what the angle is that Patterson-Ballagh spoolers actually hung, and we have introduced or presented this chart for the purpose of showing what that angle will be for various sized Patterson-Ballagh spoolers. I think we have them all represented, or two sizes represented. We have got the small, the four-section and the six-section, showing the angularity between. In other words, if you take a Patterson-Ballagh spooler and attach a rope to that eye there and run it up to the derrick and tie it 30 feet up in the derrick, as Patterson-Ballagh states you should, if there wasn't any wire line through there, it would assume a certain degree off of the vertical. Of course, when you put [410] the wire line there, it tends to lay along the wire line but we are trying to establish the difference it would be if it took that normal position, as called for in that claim and the angle that the wire line goes through there, and we have shown that for two sizes. I think that is very important because one of these shows it is five degrees off and the other shows it is 10 degrees off. That brings up the question of what is "substantial" and also brings in the question of whether it is any invention by Mr. Moss over what was previously done, not only so far as Exhibit K is concerned but also so far as the testimony of Mr. Reed and Mr. Prehoda as to how they hung the guides, and also the additional testimony, as your Honor will remember—a couple of plaintiffs' own witnesses stated that any practical man

(Testimony of Allen E. Hambly.)

in the oil field would know enough to hang it from the top. So I think this is very important testimony. Have I explained it so that your Honor will see we have some issues here as to the question of infringement and also validity?

Mr. Joseph F. Westall: I don't see any pertinence at all.

The Court: What is your statement about the claim in the Moss patent?

Mr. Caughey: It substantially means two or three degrees, as stated by Mr. Moss in his deposition. He said you could vary it two or three degrees, and then I say we don't [411] infringe. If "substantial" means 10 degrees, then we have a prior art spooler, which is well within the 10 degrees, hanging at four degrees.

Mr. Joseph F. Westall: But not far enough back and I say in your degrees you find necessary in the sale of these infringing devices, whether it is four degrees, five degrees or 10 degrees, then it is substantially so. When they put those up in the derrick, they use their common sense and get it as near as possible following the pictures of Patterson-Ballagh, without figuring exactly how many degrees. So I say that is irrelevant.

Mr. Caughey: It may be to you but you have to take a claim and put language in it so that somebody will be able to take that claim and use the invention according to the claim.

Now, may your Honor please, for example, if this

(Testimony of Allen E. Hambly.)

spooler around this wire line was just right up against it and you put an eye close to it, then the angle of inclination away from the vertical wouldn't be as much as if the eye was farther out and the spooler was thicker.

The Court: Do you dispute the accuracy of this sketch here?

Mr. Joseph F. Westall: I don't know anything about the accuracy of the chart. I have no means of knowing.

The Court: Regardless of whether it is material or not. [412]

Mr. Joseph F. Westall: I don't know whether the angles are correctly proven or not.

The Court: How about the ability of this attorney to make this chart?

Mr. Joseph F. Westall: I don't know. He is a patent attorney. That is a simple job for a patent attorney and I assume he has it correctly stated in there, but I say even there it comes within the Moss patent.

The Court: If there is no dispute as to the accuracy of this particular sketch here and the correctness of the data that appears on the sketch, then, applying that to this case, it is something that the court has to consider, is that correct?

Mr. Joseph F. Westall: I think so; I think that has got to be considered.

The Court: Then, for whatever it is worth—I don't know now whether it is applicable or not—I see the different viewpoints here but, if you don't

(Testimony of Allen E. Hambly.)

dispute the accuracy and correctness of this sketch, I am inclined to admit it in evidence for what it is worth. I don't know whether it will be material or not before we get through with this matter.

Mr. Joseph F. Westall: Yes, your Honor.

Mr. Caughey: May I, for the purpose of the record, have the witness state the conclusions that have resulted from the various things, so it will be in the record? [413]

Mr. Joseph F. Westall: I think that conclusions are not for the witness to draw but for the court.

Mr. Caughey: I mean what the angles mean on there, so there won't be any question about what those angles are.

The Court: I think that should appear in some way. You might make some notes on a piece of paper and attach them to this exhibit.

Mr. Joseph F. Westall: The angles are all indicated.

Q. (By Mr. Caughey): Do you believe, Mr. Hambly, the angles are sufficiently indicated——

A. In other words, you don't want me to explain it, is that correct?

The Court: Whatever explanation is made, I prefer that it be made on paper and attached to this.

Q. (By Mr. Caughey): Will you do that, Mr. Hambly?

The Court: You don't have to do it this minute.

A. I can do that.

Mr. Joseph F. Westall: Of course, if there is an

(Testimony of Allen E. Hambly.)

explanation and he is going to testify to it, he might put a lot of conclusions in which I would want stricken out.

The Court: I am not asking for conclusions but for facts, for an accurate statement of the facts as shown on this sketch here. If those are accurate from your viewpoint or from the correct viewpoint, of a man qualified to make a [414] sketch of this kind——

Mr. Joseph F. Westall: I haven't questioned the accuracy of the indications of the angles there. So it doesn't seem to me that there is anything left here.

Mr. Caughey: If we will agree that this sketch shows an inclination from the vertical of approximately four degrees on the wire line, and that as to Figure 2 it shows an inclination from the vertical of the spooler of nine degrees included angle——

Mr. Joseph F. Westall: Wait a minute. Let me ask you this. When you say nine degrees, here is your hanging line here.

Mr. Caughey: Yes.

The Court: That isn't a hanging of the spooler.

Mr. Joseph F. Westall: That is four degrees.

Mr. Caughey: This is just the line through there.

The Court: Let me suggest this——

A. I can explain the thing in a few simple words, your Honor, if permitted to testify.

The Court: It is getting pretty close to the time

(Testimony of Allen E. Hambly.)

for adjournment and, if you want to study this, Mr. Westall, you may do so over night.

Mr. Joseph F. Westall: Mrs. Moss would like to do it.

Mr. Caughey: No objection.

The Court: Whether or not it will apply in this case I [415] will determine later on.

Mr. Joseph F. Westall: Yes, and how it will apply.

The Court: It may be marked either for identification or in evidence at this particular time.

Mr. Caughey: Well, if he wishes at this time to examine it——

The Court: Suppose you mark it for identification.

Mr. Caughey: All right; let's mark it as the defendants' exhibit next in order, for identification.

The Clerk: Defendants' Exhibit L.

The Court: For identification. And then you will have a chance to study it between now and tomorrow morning and give me your views of it, so I can hear both sides. It is now marked for identification as Defendants' Exhibit L.

The Clerk: Does your Honor wish to permit counsel to take it out of the custody of the court for inspection?

The Court: If you want to take it out, it is perfectly agreeable.

Mr. Joseph F. Westall: Oh, no, because it is obvious, by looking at it, what it is. I won't need to look at it.

(Testimony of Allen E. Hambly.)

The Court: If you want to look at it——

A. If your Honor wants a written description——

The Court: Just a moment.

Mr. Joseph F. Westall: I would like counsel to state, before adjournment, just how many witnesses he has. I will [416] have rebuttal witnesses and I would like to know when to have them here.

Mr. Caughey: This is the last witness I will have.

Mr. Joseph F. Westall: How long will it take?

Mr. Caughey: I don't know how much cross-examination there will be.

Mr. Joseph F. Westall: There won't be any cross-examination.

Mr. Caughey: The further direct examination will depend upon how far we can go with this particular exhibit for identification.

Mr. Joseph F. Westall: Then, you probably will be through very quickly?

Mr. Caughey: Oh, yes; I anticipate I will be through very quickly. I think that we will be through, as far as the evidence is concerned, depending on what you have in rebuttal, certainly by early in the morning. Has your Honor any idea as to how you want this case handled?

The Court: I don't know just yet. Have you any rebuttal?

Mr. Joseph F. Westall: I have a little rebuttal.

The Court: I would like to have the issues clearly defined so that I will understand them.

(Testimony of Allen E. Hambly.)

Mr. Joseph F. Westall: Would your Honor like to have it submitted on briefs?

The Court: Probably you might give me some oral [417] argument and then, if I want briefs, I can have them.

Mr. Caughey: Will you set a date down for oral argument, or after we get through tomorrow?

The Court: After we get through tomorrow, you may give me some oral argument.

Mr. Joseph F. Westall: There are so many things in the case we say are irrelevant to the issues and a jumble of dates and circumstances, that, in order to straighten that out, it requires quite a little while to argue; but we can argue it if you will listen to rather a full argument.

The Court: All right. You may do this; you may file your briefs and then argue it if necessary.

Mr. Joseph F. Westall: We will argue it orally and then file briefs because then your Honor can check over the briefs, if your Honor desires. But I imagine it will take quite a little while to argue it.

The Court: That is the reason I suggested that, if you make some oral argument and then file your briefs, then I can have a better understanding, when I read your briefs, just what the real issues are and what your views are.

Mr. Caughey: Any way that is satisfactory to your Honor.

The Court: I thought, in presenting this sketch, you were getting to the meat of the proposition in

(Testimony of Allen E. Hambly.)

argument rather than presenting evidence. Isn't that true?

Mr. Caughey: No. I think it ought to be put in as [418] evidence and give the other side an opportunity of seeing it.

The Court: I will admit it in evidence. Let it be admitted in evidence.

Mr. Joseph F. Westall: For what it is worth.

The Court: Yes, and then it is here. And you advise the court as to its application.

Mr. Caughey: I will, sir.

The Court: As to the merits of this case. Then, this will be marked in evidence as Defendants' Exhibit L. And, if the court is in error in having admitted it, you have, Mr. Westall, the privilege of a motion to strike.

Mr. Joseph F. Westall: Yes; thank you. I think it is more argument than it is evidence.

The Court: We will stand in recess.

(Whereupon, an adjournment was taken until 10:00 o'clock a.m., Friday, February 20, 1948.) [419]

Friday, February 20, 1948—10:00 A.M.

(Same appearances.)

Mr. Joseph F. Westall: If the court please, there were certain exhibits which we didn't have and which we have since gotten photostats of, which I should now like to offer and have them marked by the clerk. I have furnished copies of each to oppos-

ing counsel. They are Plaintiffs' Exhibits 23, 27 and 30. There is one missing. We had offered in evidence Plaintiffs' Exhibit 9, the Oil and Gas Journal of March 31, 1945, page 8, but the page was torn out of the book, and they didn't have it in the Los Angeles Library nor did they have any copies in the Long Beach Library. So we will have to cancel that offer.

The Court: What is the offer on that?

Mr. Joseph F. Westall: We offered it in evidence and we were to get a photostat.

The Court: What was it about?

Mr. Joseph F. Westall: It was showing some of the spoolers of the defendants that they made in 1945.

The Court: The same kind of spoolers?

Mr. Joseph F. Westall: The same kind of spoolers.

The Court: There is no contention about that, is there?

Mr. Joseph F. Westall: No; there won't be any contention about that. And your Honor will notice that I, very [420] charitably am not suggesting that possibly counsel for defendants tore it out. I say I am very charitably not suggesting at all that opposing counsel did it.

Mr. Caughey: I think the remark is uncalled for, whether charitable or not.

The Court: I think I understand counsel, that he is feeling a little gay this morning.

Mr. Caughey: I am not so sure.

(Testimony of Allen E. Hambly.)

The Court: I don't think there is any offense intended by that remark.

Mr. Caughey: I trust not. As I understand, there is no question about the contents of that exhibit.

Mr. Joseph F. Westall: No; there is not, and we have got sufficient others in to take its place, so that I don't think it is very material.

The Clerk: Are you speaking of No. 29?

Mr. Joseph F. Westall: I am speaking of the one which we don't have, which is No. 29.

The Clerk: Shall I indicate that that offer is withdrawn?

Mr. Joseph F. Westall: We can withdraw it because we haven't got it and it doesn't make any difference.

The Clerk: And also, your Honor, the defendants have now offered the photostat of Defendants' Exhibit A, which I have marked in evidence. [421]

Mr. Caughey: You have a copy of it?

Mr. Joseph F. Westall: Yes; I have a copy of it.

The Clerk: It was admitted as of yesterday.

Mr. Caughey: Mr. Hambly, will you take the stand again, please?

ALLEN E. HAMBLY

a witness for the defendants, being heretofore duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Resumed)

By Mr. Caughey:

Q. I believe you previously testified you were a patent attorney? A. That is right.

Q. How long have you been a patent attorney?

A. I have been practicing as a patent attorney for a little over 10 years.

Q. And what is your education? What is your educational background?

A. I am a graduate of the Colorado School of Mines, in mining and engineering, and a law degree from the Washington College of Law, Washington, D. C.

Q. How long have you been employed by Byron Jackson Company? A. Since October, 1937.

Q. During your employment by Byron Jackson Company, did [422] you have any occasion to check into drilling rigs and structures that were used in drilling rigs?

A. Yes; many occasions. We have a patent and engineering committee, of which I am the chairman, and one of the functions of this committee is to consider a wide variety of inventions relating to oil field equipment and so forth; and, in, I believe it was, 1940 and 1941, we were considering going into the business of manufacturing drilling rigs, that is, derricks, draw-works and rotary tables and

(Testimony of Allen E. Hambly.)

any other rig, and I made an extensive investigation of all makes of rigs at that time and, during that investigation, I became quite familiar with the dimensions and various constructional features of all of the rigs on the market at that time.

Q. Have you had occasion, as an employee of Byron Jackson Company, to go into the field and look at rigs in the field and watch their operations?

A. Many times; very frequently.

Q. Have you any test rigs set up at the Byron Jackson plant?

A. We have a 122-foot A.P.I. derrick in our yard at the plant, 2301 East Vernon, and a complete drilling rig, including the derrick and the draw-works, which is the element which includes the drum on which the line is spooled, the rotary table which rotates the drill pipe, the mud pumps which circulate the drilling fluid down through the drill [423] pipe to remove the cuttings from the well, and a driving engine for the draw-works and a rotary table.

The Court: You are qualifying him as an expert? Is that the purpose?

Mr. Caughey: Yes, sir, I want to show he is familiar with this.

The Court: Is there any question about this, Mr. Westall?

Mr. Joseph F. Westall: There isn't any question as to his ability as a patent attorney and I haven't made any question about the exhibit he has offered. And, furthermore, we have gone over that

(Testimony of Allen E. Hambly.)

by many witnesses, all about rigs and sizes, and I think it is cumulative and unnecessary.

Mr. Caughey: You made an objection when I started in and that is why I am qualifying him.

Mr. Joseph F. Westall: I say anything he may testify regarding rigs and the different things he has mentioned is totally irrelevant in the case.

Mr. Caughey: That may be your opinion but that has nothing to do with the question of whether the man is qualified.

Q. Have you had occasion to watch this drilling rig in operation at the Byron Jackson plant?

A. Many times.

Q. And does that rig have installed on it a Patterson-Ballagh [424] spooler?

A. Yes; it has. It has what is known as the quartette type, which is the 32-inch length design.

Q. And that is an actual commercial-sized spooler, is that right?

A. That is right. That was used when the rig was put up, which was either in 1942 or 1943, before Byron Jackson acquired the Patterson-Ballagh Corporation.

Q. Is that spooler so installed that it will operate? Is it threaded through the wire rope?

A. Yes; it is installed in the same way as that model is installed in the plaintiffs' exhibit.

Q. Except it is a full-sized rig and a full-sized spooler? A. That is right.

Mr. Caughey: May your Honor please, we would be glad, if there is any question about how that is

(Testimony of Allen E. Hambly.)

operated, to have your Honor adjourn court and go down there at any time that might be convenient to your Honor, not necessarily today but any time prior to the conclusion of this case, and watch one of these actual spoolers in operation, used in the wells.

Mr. Joseph F. Westall: If you Honor wanted to do that, of course, I would be agreeable, if your Honor desired any such further view of the matter. I wouldn't object to it of course, but I don't think it is necessary. The device is [425] very simple. We have a model of it which the witness has just identified.

The Court: Are there any models of a Moss patent in operation?

Mr. Joseph F. Westall: Yes.

The Court: Where are they in operation?

Mr. Joseph F. Westall: They are in operation by Paterson-Ballagh Corporation. Every time Paterson-Ballagh, since the grant of our patent, has made one, it has made a Moss spooler. Every one of them is a Moss spooler.

The Court: I will ask this question, if you are in position to answer it. Is there being manufactured or are there there being now manufactured the spoolers of the patent by Moss?

Mr. Joseph F. Westall: Oh, yes. Mrs. Moss has testified that they have made and sold a number of them.

The Court: Are any of these in operation?

(Testimony of Allen E. Hambly.)

Mr. Joseph F. Westall: It may possibly be that there are.

Mrs. Moss: Yes.

Mr. Joseph F. Westall: In actual operation?

Mrs. Moss: Yes, sir.

Mr. Joseph F. Westall: In drilling?

Mrs. Moss: Yes.

The Court: In this vicinity?

Mrs. Moss: In Long Beach. [426]

Mr. Joseph F. Westall: Are they of recent origin, those makes?

Mrs. Moss: They are the same way they have always been made.

Mr. Joseph F. Westall: The same thing?

Mrs. Moss: Yes. In fact, within about four blocks of each other, there is a Patterson-Ballagh spooler in operation and a Moss spooler in operation.

Mr. Joseph F. Westall: Both in operation?

Mrs. Moss: Right near the vicinity of each other.

The Court: If I think it may be advisable later on, I will let you know.

Mr. Caughey: Yes, sir.

The Court: I may want to see this device in operation and probably both of them. I know there is only one involved in so far as your contention is concerned, which is your patent, the Moss patent.

Mrs. Moss: May I say this: If we do look at the device, let's look at one that is actually operating on a drilling well, one that is not on display.

(Testimony of Allen E. Hambly.)

The Court: Will you communicate that to your counsel?

Mr. Joseph F. Westall: Yes. We will wait until we hear from your Honor and will be glad to co-operate in any way we can.

The Court: Yes. [427]

Q. (By Mr. Caughey): I believe you testified that you became familiar with dimensions of drill-rigs during your study that you made?

A. That is right.

Q. In addition to your study, is there any standard pamphlet or anything that gives the dimensions relied upon by the oil industry?

A. Yes, there is.

Q. What is that?

A. That is the specifications put out by the American Petroleum Institute.

Mr. Joseph F. Westall: If the court please, this is entirely irrelevant. There is no issue as to size of rigs. It has been testified how big they were, how high they were, and all about their sizes, and you will find there will be no issue as to rigs. We don't claim a patent on a derrick.

The Court: But there is a claim here on the part of the defendants that your claim is so indefinite that the validity of your patent in that respect is in dispute. Is that your claim?

Mr. Caughey: That is one of the claims.

Mr. Joseph F. Westall: That, of course, is in dispute but it will be a matter of argument and we say it is entirely irrelevant.

(Testimony of Allen E. Hambly.)

The Court: I am not sure at this time whether it is or [428] isn't.

Mr. Joseph F. Westall: I know on many of these objections your Honor couldn't be sure and your Honor had to let much of the evidence in because you couldn't know until final argument.

The Court: In fact, I haven't had an opportunity to examine all of these exhibits. There is a mass that I will have to examine carefully. This trial has been in constant progress and I haven't had the opportunity of going through these exhibits carefully. So I want all the light I can possibly get, from every conceivable viewpoint.

Mr. Joseph F. Westall: Yes, your Honor. And you will find the examination of all those different exhibits could be deferred until you hear the arguments because you will find then just how they fit together and what pertinence they have.

The Court: You may proceed. And give me whatever you have in relation to that inquiry and then I can determine later on if it has any relevancy.

Q. (By Mr. Caughey): I show you a booklet, consisting of some 82 pages, and ask you to look at it and state whether you can tell what that is.

A. That is a copy of the A. P. I. Standard No. 4, 12th Edition, published in July, 1944, and it is entitled, "A. P. I. Specifications for Standard Rigs, Derricks and Accessory Equipment." [429]

Q. Is that the same pamphlet you previously referred to?

A. That is correct.

(Testimony of Allen E. Hambly.)

Q. That is relied upon in the industry to show the dimensions of rigs? A. That is right.

Q. Will you please turn to the page, if there is one in there, that shows those dimensions?

A. Pages 6, 7 and 8, contain a table of dimensions of derricks, standard steel derricks, of various heights. The dimensions are referred to by reference to the letters A, B, C, and so forth.

The Court: What bearing will this have in relation to this particular matter which, apparently, was first conceived in 1936 or 1937 or thereabouts? What bearing will that have on a 1944 survey or synopsis?

Mr. Caughey: Patterson-Ballagh sold spoolers in 1944, '5 and '6 which were charged to be infringements, and we want to show not only what they were at that time but we have previous testimony as to what they were in 1936 and '7, and we want to show the standard size now is substantially the same. [430]

Mr. Joseph F. Westall: We say it is totally irrelevant. Furthermore, those same derricks are what Moss is hanging in. They hang them the way Moss hangs them.

Mr. Caughey: That isn't the question in this case.

The Court: Go ahead.

Q. (By Mr. Caughey): Proceed, Mr. Hambly.

A. This table, on page 8, refers to the 122-foot derrick as having a 24-foot square base and a five-foot six-inch water table opening, which is the

(Testimony of Allen E. Hambly.)

dimension on each side, of the side dimension of the derrick at the top.

The Court: What page is that?

A. Page 8. The same table gives the dimensions for the standard 136-foot derrick as having a 26-foot base and the same five-foot six-inch water table opening. All the A. P. I. derricks have the same water table opening dimension.

Mr. Caughey: The booklet identified by the witness, and particularly the pages referred to, is offered in evidence as defendants' exhibit next in order.

Mr. Joseph F. Westall: That is objected to as irrelevant and immaterial to any issue in the case.

The Court: It may be received and marked Defendants' Exhibit M in evidence.

Mr. Caughey: May your Honor please, I don't know whether Mr. Westall had an opportunity to look at this exhibit or not but, in order that there may be no question in [431] the future about some computation or about the way it was done and so on, I believe the best thing to do is to have this witness testify to it, as to the way it was made and what the angles mean and how they were computed, so that later we won't have any question or any argument as to just exactly what they cover.

Mr. Joseph F. Westall: We have already stipulated or stated that we believe those angles are correct and that they are correctly figured. I had intended to bring a protractor here and figure it, although I don't think it is material. We have agreed

(Testimony of Allen E. Hambly.)

to it, so I don't see why we should take the time to go over it.

Mr. Caughey: He hasn't fully explained it.

The Court: Your computations are based upon the tables set forth in that exhibit, is that correct?

A. The computations as to the derrick itself, not as to the natural angle of inclination of the spooler.

The Court: That is your computation?

A. That is my computation but it is not based on any figures given in Exhibit M.

Mr. Caughey: That is what I want him to explain, so there won't be any question about it.

Q. Mr. Hambly, with reference to Figure 2 of Defendant's Exhibit L, will you specify what Patterson-Ballagh spooler is shown therein? [432]

A. Are you referring to Figure 2 or Figure 3, at the bottom? Figure 2 is the sextette or six-section guide. Figure 3 is the quartette.

Q. I am referring to Figure 3.

A. Figure 3 illustrates a side view of the Patterson-Ballagh quartette or four-section guide, having four rubber inserts. No. 3 is the quartette and 2 is the sextette.

Q. With reference to that particular Figure—3, is it? A. Yes, sir.

Q. —will you please explain how you determine, when the spooler is hanging freely there from a hanging line attached to the upper eye, that the axis of the spooler is inclined at an angle of 14

(Testimony of Allen E. Hambly.)

degrees as shown on that Figure? Do you want to use anything to demonstrate?

A. If I could use that small model.

Q. May I ask what this small model is?

A. This is a one-fourth scale model of a Patterson-Ballagh four-section spooler, made to scale.

Q. Made to scale?

A. Of the type which they now manufacture. The eye at the upper end is the eye to which this hanging line is attached and it is an elementary principle of physics that any body which is suspended freely from a single point will assume a position in which the center of gravity of the body is [433] directly below that point of suspension.

If it is due to the force of gravity, assuming it is concentrated at the center of gravity, which in this case, as in any symmetrical body, is half way between the ends and directly on the axis, that is, the center of gravity of the body; and, when that body is suspended from a central point and free to tilt or swing any way, it is under the influence of gravity and is not restrained by any other force, such as by having a line spooled through it, that will hang with the center of gravity directly below the point of suspension. And it is a simple mathematical computation to determine what angle the axis of the spooler assumes when it is hanging in that freely-suspended position because you have a right angle, one leg of which is the distance from the eye, along the axis to the center of gravity, the

(Testimony of Allen E. Hambly.)

other leg of the triangle being the distance from the axis straight out at right angles to the axis to the point of suspension; and, if those distances are known the angle of inclination can be known. In this particular spooler the body is 28 inches long and this point of suspension at which the hanging line engages the eye is $3\frac{1}{2}$ inches offset from the axis. I believe that Mr. Ballagh testified, from memory——

Q. He said four.

A. $4\frac{1}{2}$, but I actually measured the distance and it is $3\frac{1}{2}$ inches. And from this dimension, that 14 inches [434] from the end down to the center of gravity, $3\frac{1}{2}$ over 14 is the tangent of that included angle between the line X on Figure 3, which represents the axis of the spooler, and the line 14, which represents the vertical hanging line. That included angle between those two lines can be determined from the two dimensions of this triangle. The tangent of that included angle is this offset dimension, $3\frac{1}{2}$ divided by the longitudinal dimension of 14, which in this case is exactly one-fourth or .25. From a table of natural tangents, the angle, which has a tangent of .25, can be found in the tables and it is 14 degrees. That is how that angle is determined mathematically.

Q. And I believe you previously stated that the angle of inclination of the wire rope of the drum was how much for a 122-foot derrick?

A. Approximately 4 degrees and 16 or 17 minutes; less than $4\frac{1}{2}$ degrees.

Q. What would be the difference, then, between

(Testimony of Allen E. Hambly.)

that normal angle of the spooler, if it hung freely, and the angle of the inclination of the line?

A. Since the drilling line is inclined at an angle of approximately 4 degrees and the axis of the spooler, when suspended freely, is inclined at an axis of approximately very close to 14 degrees, then the axis of the spooler in that position is offset approximately 10 degrees from the [435] line.

Q. Referring to the Figure which shows the six-section spooler—— A. That is Figure 2.

Q. ——will you please explain in a similar manner how you made the computations shown thereon?

A. The determination of the angle of inclination of the six-section spooler, the Patterson-Ballagh spooler, when hung freely from the hanging line at the upper eye, was determined by the same process as in the case of the four-section spooler, the only difference being that the six-section spooler has a 44-inch body instead of a 28-inch body, which places the center of gravity 22 inches below the top of the body or the metal housing, in other words, 22 inches below the eye. And in that case the tangent of the included angle, between the axis of the spooler and the vertical hanging line, or a vertical plane, is $3\frac{1}{2}$ divided by 22 instead of $3\frac{1}{2}$ divided by 14, as in the case of the four-section spooler.

Q. And that angle was determined as nine degrees, approximately?

A. I believe it was nine degrees and five minutes.

Q. Are you familiar with the two-section spool-

(Testimony of Allen E. Hambly.)

ers that are manufactured and sold by Patterson-Ballagh? A. Yes. [436]

Q. And with the dimensions thereof?

A. Yes.

Q. Have you made any computations in connection with that particular spooler to show the included angle, such as you have in Figures 2 and 3?

A. Yes; I have, but we decided not to show it on here because it is so far away from the axis of the line. It is a much worse condition than the four-section spooler of Figure 3. The two-section spooler has two 8-inch rubber inserts and an overall length of 16 inches. The body is 12 inches long, which places the center of gravity 6 inches below the top and below the point of suspension. So in that case the angle of inclination of the axis of the spooler, when hung freely from the upper eye, is that angle which has a tangent of $3\frac{1}{2}$ divided by 6, and that angle is 30 degrees and some odd minutes, 20 minutes, I believe.

Q. And the difference between that 30 degrees and the normal inclination of the line would be what?

A. That would be approximately 26 degrees. In the case of the six-section spooler of Figure 2, I don't believe I mentioned that, with the 9-degree inclination of the axis of the spooler from the vertical, that places the spooler axis offset from the line approximately 5 degrees.

Q. Referring to Figure 4, will you please explain what that is? [437]

(Testimony of Allen E. Hambly.)

A. Figure 4 is a side view of the Patterson-Ballagh four-section spooler, hung not by the single eye in the back but hung from the two eyes at the side, to which the side bridles or the upper forks of the side bridles are attached, in other words, hung in accordance with some of the testimony which the defendant has put in as to the hanging of the Reserve Oil and Gas spooler and the hanging of the Reed split-pipe spooler which was used on Gibson No. 7 and the hanging of the wooden spooler which was used on Belridge No. 19. In other words, it is hung from two points which are diametrically opposite the axis, so that the spooler assumes a vertical position. The axis of the spooler is vertical instead of inclined as when you hang it from an offset eye. This Figure 4 is intended to illustrate that position of the spooler when hung in that manner and to show that the axis of the spooler in that case is offset from the drilling line only 4 degrees, which is less than the offset in the case of any of the other illustrations.

Q. Regardless of the length of the Patterson-Ballagh spoolers, is the eye always the same distance from the axis?

A. That eye is the same distance from the axis because they use the same diameter rubbers and the same wall thickness. In other words, all spoolers are identical in the upper portion of them. The difference is in the length.

(Testimony of Allen E. Hambly.)

Q. Mr. Hambly, have you computed how long a spooler [438] body would have to be in order that the body would normally hang freely at the same angle of inclination as the wire line, that is, the four degrees angle or approximately?

A. I have.

Q. Will you please give the results?

A. May I refer to notes?

Q. Yes, if you have some notes.

A. Yes; I have computations of that. In order to have an inclination of four degrees on the axis of the spooler, inclined 4 degrees from the vertical, the spooler would have to be of such a length and the center of gravity would have to be such a distance below the top of the spooler that that included angle would have a tangent of four degrees. And the length from the top of the spooler to the center of gravity at the mid point of the spooler can be determined if we know the angle of this triangle and we know one side. You simply divide the $3\frac{1}{2}$ offset by the tangent of 4 degrees. The tangent of 4 degrees is .06993, and from that it is determined that the center of gravity would have to be 50 inches below the top of the spooler. In other words, the body would have to be a hundred inches long. And, since the center of gravity is mid way between the ends and with a 2-inch overhang of the rubbers at each end, it would be 104 inches long, which is 8 feet 4 inches, and would require 13 rubbers to fit in that 104 inches exactly. [439]

(Testimony of Allen E. Hambly.)

Q. And the longest length that Patterson-Ballagh makes is a six-section?

A. 48 inches overall.

Q. Is that with the eye $3\frac{1}{2}$ inches from the axis? A. That is right.

Q. Did you make any computations with the eye any closer to the axis?

The Court: What is this testimony for? I am trying to get some information here. When you go into these various lengths and formulas, I don't know how it will help.

Mr. Caughey: I can explain that in language I think you and I can understand afterwards.

Mr. Joseph F. Westall: I would like to explain this. It doesn't have a bit to do with the case. It is totally irrelevant.

The Court: It may not but, first, I think I should have the information to see whether it applies or not.

Mr. Joseph F. Westall: Yes; that is true.

Mr. Caughey: I will endeavor to show your Honor exactly how it applies and what it means. We have to get the measurements in first so there won't be any question about the angle.

The Court: May I suggest, if the witness would note down on a sheet of paper his various calculations here, these various lengths and various angles——

Mr. Caughey: They are in the record. [440]

The Court: Wouldn't that help to analyze the chart?

(Testimony of Allen E. Hambly.)

Mr. Caughey: When your Honor suggested that and I said that would be satisfactory, Mr. Westall said then that they are self-serving and that they had better be in the record.

The Court: After his testimony, if he will supplement his testimony with his calculations in writing and attach it to the chart, I think it will be advisable.

Mr. Caughey: We will be glad to do that and we will attach them right to the exhibit.

A. I can make them in ink right on the exhibit.

The Court: That is one way of doing it, too.

Q. (By Mr. Caughey): Mr. Hambly, the distance which the eye is offset from the axis, which would be the wire rope going through the guide or spooler—is that important in so far as the angle of inclination is concerned?

A. It is very important. It has a strong bearing on what angle the spooler will normally assume.

Q. In other words, the closer to the axis, you would have a less angle of inclination, is that right?

A. That is right for the same length, for a spooler of the same length. A given length, the closer the point of connection of the hanging line to the eye is, the more nearly vertical the spooler will hang.

Q. Can you explain that by taking that little model [441] and perhaps holding it so we can see what you mean?

A. I can do it this way, I believe. Hanging it by this eye, it assumes that angle.

(Testimony of Allen E. Hambly.)

The Court: That is the eye at the top?

A. That is the eye at the top. If that eye were moved in closer to the axis—it is a little difficult to show that except possibly on this side—in effect, by taking the two points offset from the axis, or the line offset from the axis, that is the equivalent of suspending it from a single point on that line. If we get out here, that is the equivalent of suspending it from a point on the outer diameter of the rubber and, as can be seen, it assumes a more nearly vertical position than when it is suspended out here at the eye.

Q. Will you suspend it from the eye so the court can see that?

A. It is that angle suspended from the eye. Here is a closer position. A line between these two hits somewhere on the top of the rubber. When we get into or on the two points right on the axis, then it hangs directly vertical, as I have shown in this case. There is a limit how far in you can go with an eye because you have got to have a certain amount of rubber between the line and the body. The less rubber you have the shorter life you will have, for you have to replace the rubbers. Patterson-Ballagh rubbers are five [442] inches in diameter. The hole is approximately an inch and a quarter in diameter for an inch and an eighth line, which means that you have a thickness of rubber of $2\frac{1}{2}$ less $\frac{5}{8}$, which is a little less than two inches on the side. If you use smaller rubbers—

(Testimony of Allen E. Hambly.)

The Court: It isn't a question of rubbers. It is a question of something else, isn't it?

Mr. Caughey: The size of the diameter of the rubbers depends on where you put the eye.

A. If you use a single eye, it has to be outside of the rubbers. If you suspend from two points on opposite sides, you can get the effect of suspending from a single point within the dimensions of the rubber.

Mr. Caughey: In other words, it would hang vertically.

The Court: There is nothing involved in that respect here, is there?

Mr. Caughey: Yes; there is because we have in evidence prior art photographs showing they are hung vertically at the top, which would tend to cause the spooler to assume an angle which is substantially contiguous to the line.

The Court: But that evidence goes to the suspension of the eye at each side from the top?

Mr. Caughey: That is right.

The Court: Not on the inside but on the outside?

Mr. Caughey: The Moss spooler has an eye on the outside [443] also.

The Court: How can the suspension from the inside of the rubber area affect the situation?

Mr. Caughey: They are both suspended from the outside. One is suspended on one side and the others are suspended from their sides.

The Court: The witness is assuming a suspension from the inside, within the rubber area.

(Testimony of Allen E. Hambly.)

Q. (By Mr. Caughey): Will you please explain that a little more fully?

A. By suspending it from two points down here——

The Court: Two points on the outside?

A. On the outside but which are offset from the axis—the line between those two points extends through the rubber. That has the effect of suspending it from a single point on that line, if you could put an eye in there.

The Court: In other words, it would be as nearly vertical as possible?

A. Yes.

Mr. Caughey: That is correct.

A. And, in order to get a suspension at an angle of four degrees, to exactly conform to the angle of the line, you would either have to use two side points of suspension or you would have to reduce the size of the rubber sufficiently to bring the body in to that point close to the axis. [444]

Mr. Caughey: The model which the witness has identified and which he has used in his testimony, in illustrating his testimony, is offered in evidence as Defendants' next exhibit in order. He will testify that is a scale model of a Patterson-Ballagh four-section spooler.

The Court: It may be received.

The Clerk: Defendants' Exhibit N.

Q. (By Mr. Caughey): In your testimony, when you have been talking about the angle of inclination, you have been talking about the way in

(Testimony of Allen E. Hambly.)

which the body would incline if the wire rope wasn't threaded through it, is that correct?

A. That is correct, when it is suspended freely in its natural or normal suspended position.

Q. I believe you have previously testified that you have read the Moss patent, have you not?

A. I have and I so testified, I believe.

Q. Are you familiar with claim 2?

A. I am.

Q. And with the use of the word "normal" therein?

A. I believe the word "normal" is used in the phrase which defines the axis of the draw line controller as normally parallel and contiguous to the drilling line.

Mr. Joseph F. Westall: Now, if the court please, we move to strike out the answer on the ground that the interpretation of that claim is for the court. This witness should [445] not be allowed to attempt to place interpretation on it. That is a matter of argument and not evidence.

Mr. Caughey: I don't agree. This man is an expert witness and we are not asking him to interpret the entire claim. We are asking him what one word means in there. The plaintiff has made no attempt in this case to go into this patent and tell your Honor what the claims are or anything else, and there is a very good reason for it, and I think that your Honor should be assisted in some way in this case so that you will know what these things mean, without having to come to argument. Let's

(Testimony of Allen E. Hambly.)

get some evidence in the case and see what they mean, without arguing and having nothing in the record to support the argument.

Mr. Joseph F. Westall: The interpretation of a claim is for the court, in the light of the argument. Counsel says this witness is an expert and an attorney. Counsel is also an attorney and can explain it to the court.

The Court: Let me ask you this question. What is there for the court to determine in this case in relation to this claim No. 2? You are now inquiring or getting expert testimony as to the use of the word "normal" here?

Mr. Caughey: Yes. And I would ask your Honor to read this claim now, as you have heard this case, and see if you understand from what you have heard of this case what the word "normal" means. If you do, then I won't ask the question of [446] the witness at all.

The Court: I don't know that I quite understand it. The phrase is used, "to support the body in normal position with the bore substantially parallel and contiguous to the line."

Mr. Joseph F. Westall: We will find, when we come to argue the case, that is perfectly proper, and we have the face of the patent itself. It speaks for itself. The interpretation is for the court. A witness may be called, an expert witness, to explain things of the prior art that are not understood.

Mr. Caughey: All right. Will you stipulate with

(Testimony of Allen E. Hambly.)

me, Mr. Westall, that that term as used in that claim means that, with the wire line being threaded through it—it means that the spooler, being hung freely, suspended, would assume a position which is substantially parallel to the wire line if it were threaded through it?

Mr. Joseph F. Westall: The claim speaks for itself. That is all I can say.

Mr. Caughey: You won't so stipulate?

Mr. Joseph F. Westall: I will stipulate that the claim says what it does and, in the light of the specification, it is clear what it says.

Mr. Caughey: Will you say that I am wrong in my statement, Mr. Westall? [447]

Mr. Joseph F. Westall: Your statement is not complete and is misleading and it will be shown in the argument that it is that way. There is nothing wrong with those claims, as will be shown, and as is already clearly in evidence.

Mr. Caughey: I think your Honor can see the reason for my question, so that your Honor will have some evidence to back up the language. There is no definition of the word "normal" in and of itself there, and you have to read the patent entirely.

The Court: What is the law with reference to receiving evidence to explain the meaning of terms used in claims?

Mr. Caughey: It is done every day. You don't have to be bound by the testimony of an expert. It is customary in patent cases and in any technical

(Testimony of Allen E. Hambly.)

case to receive evidence of this nature. As Mr. Westall knows, it is done in practically every patent case we have.

Mr. Joseph F. Westall: No; I don't know anything of the kind. What they are attempting to do is to get an argument over by another patent, in the guise of examination. He is stating matters of opinion.

The Court: Let's see if I understand this situation correctly. You claim that your patent is infringed upon because of the location of the eye at the top?

Mr. Joseph F. Westall: The hanging line.

The Court: If that is the case, wouldn't the same principle [448] apply, in so far as your patent is concerned, as counsel now seeks to have apply to this other patent, the defendants' patent.

Mr. Joseph F. Westall: I don't think there is anything different. I may not understand fully but I don't know any difference between these two patents so far as the idea of hanging the thing correctly is concerned.

The Court: If an explanation is made of the use of these terms in relation to the model that has just been offered in evidence, wouldn't that explanation have the same force with respect to your patent?

Mr. Joseph F. Westall: It probably would have the same effect as to my patent.

The Court: In other words, wouldn't the same

(Testimony of Allen E. Hambly.)

principle of physics or whatever else is involved here be applicable in your patent as well?

Mr. Joseph F. Westall: I think it would be applicable to either one of them.

The Court: If that is the case, and if the terms used in this claim as set out in the patent are susceptible of construction or should be, then, why isn't this testimony of assistance to the court in that respect?

Mr. Joseph F. Westall: Because there are courts which will not permit an expert to compare the claims. We have had that ruling many times. If so, the ultimate question is for [449] the court. The patent itself is evidence and we have much evidence in here as to how it was applied.

The Court: But in this particular instance there is no comparison of the claims. The same principle in physics may apply in one case as in the other.

Mr. Joseph F. Westall: Yes; the same. That is true, your Honor.

Mr. Caughey: And that is exactly what I have in mind.

The Court: I still have considerable to learn about what your theories are here, which I will get, no doubt, from your arguments. I can't see at this time that it will do any harm to the matter in issue if you apply the same explanation in so far as this particular element is concerned, to both patents. If it applies the same to both patents, how can it be any particular detriment to the issues in this case?

(Testimony of Allen E. Hambly.)

Mr. Joseph F. Westall: I don't think it is any particular detriment. I don't think that. But, you see, a witness is called to testify to facts, not as to matters of law, and the purport of these questions is to have this witness testify to matters of law. Now, the facts are clear.

Mr. Caughey: No. A fact witness is on thing and an expert witness, who testifies to what the state of the patent is, is a different thing.

The Court: We are now construing the language used in the patent, the Moss patent? [450]

Mr. Joseph F. Westall: Yes.

Mr. Caughey: We are not construing the whole claim or asking your Honor to pass on the question of validity. We are merely asking, from the witness' knowledge by reading the patent and claims, what he understands by the words "normal position," as a patent attorney, so that it will assist the court.

Mr. Joseph F. Westall: That is an interpretation of the claims. That doesn't aid the court because the court can make his own interpretation after hearing the arguments.

Mr. Caughey: But the court needs all of the assistance it can get in interpreting these claims and that is the reason for this.

The Court: What do you claim, Mr. Westall, is the "normal position"? Do you make any claim in that respect?

Mr. Joseph F. Westall: It is just as he has described in the claim.

(Testimony of Allen E. Hambly.)

The Court: What is it?

Mr. Joseph F. Westall: The only way I could answer it would be to read the claim.

The Court: What is your theory about what a "normal position" is?

Mr. Joseph F. Westall: Just as I say; it is just as described in the claim. You can't make the claim specific as to degrees. [451]

The Court: You have a model here. Can you illustrate on your model just what is in your mind as to the "normal position" of that device?

Mr. Joseph F. Westall: I will read the claim. "A draw-works drum line controller body having an elongate, line receiving bore, a pair of opposite lateral control devices each including parts diverging toward the opposite ends of and connected to said body to stabilize it against vibration on its minor axis in the plane of said devices, and a suspension means connected to said body at a point eccentric to the major axis and adjacent to one end of the body to support the body in normal position."

When it is supported, it is in normal position provided it is directed downward to the drum.

Mr. Caughey: What is directed downward to the drum?

Mr. Joseph F. Westall: The spooler line is directed as when somebody—it says, "to support the body in normal position with the bore substantially parallel and contiguous to the line for reception thereof substantially without load of the

(Testimony of Allen E. Hambly.)

body on the line when this is in a vertical plane transverse to the axis of the draw works drum."

The Court: And is that the normal position?

Mr. Joseph F. Westall: It says parallel with a contiguous line.

The Court: The normal position would be the angle, then, [452] of the line that goes through it, is that it?

Mr. Joseph F. Westall: Yes.

The Court: Whatever degree it may have at that time?

Mr. Joseph F. Westall: Yes. "Contiguous to the line for reception thereof substantially without load of the body on the line." In other words, when it is suspended there, there is no weight of the body on the line. It is suspended so as to have the bore in a proper position for the line to go through and be spooled.

The Court: And, if it is suspended in the normal position, it would mean, if you were to drop the line through there, there would be no friction or contact with any part of the interior, is that it?

Mr. Joseph F. Westall: They can't possibly avoid some little friction here but it is to minimize it as much as possible.

The Court: I don't mean in the use of it. But let us say, when it is not in use and it is in a normal position, is it absolutely parallel to the line that goes through it?

Mr. Joseph F. Westall: It is as parallel as they could naturally get it. It would be impossible

(Testimony of Allen E. Hambly.)

for anybody to tie that up and have it just exactly but it is substantially so.

The Court: Just what do you mean by the words "normal," "substantially," and all of those words?

Mr. Joseph F. Westall: "the normal position with the [453] bore substantially parallel."

The Court: What does that mean?

Mr. Joseph F. Westall: As parallel as they can get it with the bore through there.

The Court: Then, it isn't parallel? Is it or isn't it?

Mr. Joseph F. Westall: It is substantially so, as nearly as can be gotten.

The Court: When you use that term and say "substantially," you use it relatively in connection with some other object, don't you?

Mr. Joseph F. Westall: Yes; but you are using it in regard to the line which is being spooled.

The Court: If you say "substantially parallel" to that line, you mean it is parallel?

Mr. Joseph F. Westall: It means as parallel as they can make it. Of course, you know, when that winds up on the drum, it gets thicker and gets wider and so forth, and all that varies just a little bit. So that all you can say there is "substantially" so. That is the nearest they could come to it and I don't know of any other way I can explain that "normal position," and that, to me, seems to be clear.

Mr. Caughey: May I give my explanation of what I think "normal" means as used?

The Court: Yes. [454]

(Testimony of Allen E. Hambly.)

Mr. Caughey: I think the words "normal position" as used in that claim mean this. If you take and attach a line to a girt on the derrick and you let it fall down, and attach the other end to a spooler and let it drop down and go down straight, so that, depending upon where this was attached, it would assume an angle of inclination, that is, before the line is threaded through it, that is the normal position it would take as it is hung, the normal offset position. If this was a split one, you could open it up, lay the line in there, and you wouldn't have any friction on the line. In other words, it would be parallel to the line. That is the normal position.

Mr. Joseph F. Westall: In the first place, Mr. Caughey, you don't put the line up in the derrick and let it drop down. You have it fastened to the top of the spooler before you put it up. Then you put it up and tie it to such a girt as will make the bore through substantially parallel with the line, and then you have the normal position as nearly as you can get it. You can't make it exactly so. The only word that will describe it is "substantially" so, because, if it is not parallel, there will be a wearing on the upper and lower rubbers, and anybody, with common sense, installing one of those things would so hang it, selecting the girt and height and so forth, and relative to where the drum is, so that it would hang freely with the bore through the [455] spooler or the line for the cable to go through to be wound, as nearly as possible, directly

(Testimony of Allen E. Hambly.)

to the drum from the crown block. It depends upon where the crown block is, too, and other things.'

The Court: Then, there is a difference of opinion between the litigants as to what the "normal position" is, is that right?

Mr. Caughey: Not very much. I am merely saying, if you hang——

Mr. Joseph F. Westall: It is impossible for me to see any difference from what counsel says and what I have explained. We are just using words.

The Court: This device is described here in connection with its use and its suspension and all of those elements, is that correct?

Mr. Caughey: Yes.

The Court: And Mr. Westall is assuming a normal position in relation to its installation, is that right?

Mr. Joseph F. Westall: Yes; it is a normal position.

The Court: If it were to hang from that eye, without anything going through it, but the wire going through it, the position may be a little different or would be different, using the words "normal position," then if the line is run through it and attached to the drum?

Mr. Joseph F. Westall: No; I don't think so. When it [456] is in normal position, it is hung so that this bore through there is substantial, parallel with the line of the spooler, in other words, if hung in the position where it will spool. That is the normal position that he speaks of.

(Testimony of Allen E. Hambly.)

The Court: Then, what is the difference between you two gentlemen?

Mr. Caughey: I think I can explain it. Let's assume, taking the model, we have this model hung, hanging freely, suspended freely, and in the position it would normally take.

The Court: The witness has described that.

Mr. Caughey: That is right. Now, let's assume that there is no drilling line threaded there at all, and let us assume that there is a drilling line out here, that is parallel to this normal inclination, that runs along parallel to the center line. So then, if you just took and moved this over and closed it around that parallel drilling line, then the normal position would be as Mr. Westall has said. You get it as close as possible so there won't be any friction, so the line will run through it.

The Court: That normal position will be assumed in connection with the line that goes through it?

Mr. Caughey: Because it is the same inclination as the line.

The Court: But the angle will be different at that particular stage than if it were suspended freely? [457]

Mr. Caughey: No; not if you hang it at the same inclination.

Mr. Joseph F. Westall: I don't think there is any difference in our explanations.

The Court: I think I will take this evidence

(Testimony of Allen E. Hambly.)

for what it is worth; not that I am going to be bound by it or that I am going to consider it. If I determine, after I study this a little more, that no explanation, as you state, is relevant, with the terms used in the claim, that explanations are not relevant—is that correct?

Mr. Joseph F. Westall: Yes.

The Court: That the court is to determine the meaning of those words——

Mr. Caughey: I will agree with your Honor on that. This is merely to assist the court.

The Court: With that observation I made, I will take that evidence to get an idea of what isn't or is meant.

Mr. Joseph F. Westall: I would like to say this, in addition. The drawings of the patent in suit show the hanging and show exactly what he means by the "normal position" in Figure 1. It is suspended up at 15, at the side of the derrick, and hanging down there, and it shows the line going onto the spooler, directly straight up to the crown block, without apparently any friction. And, when I say there might be friction, of course, it is [458] impossible——

The Court: I think that is correct. It does show that, doesn't it?

Mr. Caughey: I think it does show that.

The Court: Let's go ahead and then I will consider it.

Q. (By Mr. Caughey): Will you please answer the question?

(Testimony of Allen E. Hambly.)

A. Could you give me the question?

The Court: You had better ask another question.

Q. (By Mr. Caughey): Will you please state what is your understanding of the words "normal position" as used in Claim 2?

The Court: His opinion, do you mean?

Mr. Caughey: Yes, sir.

Q. Your understanding of the words "normal position" in the Moss patent.

A. I construe that phrase to mean the position which the spooler naturally assumes when freely suspended, without any line passing through the bore or any other restraining force acting on it other than gravity, freely suspended; not when the line is passing through it, because, when the line passes through it, it has to assume the inclination of the line because that line is under tension.

Q. There is a heavy load on that line, is there not?

A. There is always a load of several tons on that line.

The Court: Is that any different—I don't see that [459] that is any different than what this claim recites.

Mr. Caughey: No, except that, if the angle of the line was at a different inclination from the angle that the spooler would naturally take, then, of course, the spooler, if it is around the wire, would assume a different angle than it would if it was freely hung.

(Testimony of Allen E. Hambly.)

The Court: Go ahead. Are there any more questions?

Q. (By Mr. Caughey): I show you the Smith patent, which is in evidence as Defendants' Exhibit E. Are you familiar with that patent, Mr. Hambly?

A. Yes; I am familiar with the patent.

Q. Does that patent show any suspension lines that are attached to the spooler near the top?

The Court: Is that the one with the rollers?

Mr. Caughey: Yes, sir.

A. It shows two suspension lines extending up in the derrick, parallel to each other, attached to a girt some distance up from the spooler.

Q. And where are they attached at their lower ends?

A. At their lower ends, they are attached to two eyes, one on each side of the spooler, midway between the upper and lower ends of the spooler.

Q. From your knowledge of derricks, how far up would you say they were suspended from the place the spooler is positioned in the derrick? [460]

A. About 35 feet.

Q. And do those lines function to suspend the weight of the spooler shown in the Smith patent?

A. Yes.

Q. And do they tend to cause the spooler to naturally assume a vertical position if it is freely suspended?

A. The two points of suspension are on directly opposite sides of the spooler body, on a line extend-

(Testimony of Allen E. Hambly.)

ing through the axis of the body, where the drilling line passes, and, consequently, it would tend to assume a truly vertical position, with the opening between the rollers extending vertically.

Mr. Caughey: In addition to the reason for which the patent was previously introduced, we also introduce it for the purpose of showing the prior art in so far as the use of hanging lines is concerned.

Mr. Joseph F. Westall: If it is introduced as an anticipation, it is objected to because it is not pleaded.

Mr. Caughey: I am introducing it to show the prior art so far as the use of hanging lines is concerned.

Mr. Joseph F. Westall: It certainly cannot be used to invalidate the Moss patent in suit. That was a co-pending application with Moss, which was issued after Moss.

The Court: Is there anything further?

Mr. Caughey: I would like to put in, may your Honor [461] please, just to show the state of the art, three patents to show that there were line controls and spoolers in the art, to give your Honor some idea this was a problem because of the whipping of the line. That problem was solved not by Moss but by Reed. And I would like to put in three prior art patents.

Mr. Joseph F. Westall: Are those patents that were cited in the file wrapper?

(Testimony of Allen E. Hambly.)

Mr. Caughey: Yes; they were patents which I set up in the answer.

Mr. Joseph F. Westall: Those were patents which were considered in the Moss and Reed applications.

The Court: They may be received.

Mr. Caughey: They are Posey No. 1,649,184.

The Clerk: Defendants' Exhibit O.

Mr. Caughey: A patent to Bell, No. 1,566,641.

The Clerk: Defendants' Exhibit P.

Mr. Caughey: And Grill No. 1,907,787.

The Clerk: Defendants' Exhibit Q.

Mr. Joseph F. Westall: Those are three that were cited in both file wrappers of Reed and Moss.

Mr. Caughey: That is all, Mr. Hambly.

Cross-Examination

By Mr. Joseph F. Westall:

Q. When you defined the normal position of the hanging [462] line with reference to the Moss claim, as you understood it, did you consider the drawings of the Moss patent? Did you look at the drawings of the Moss patent?

A. I looked at the drawings and I also bore in mind certain language in the specification and description of the invention of the Moss patent. In other words, on page 2 of the Moss patent, starting with line 3, it states, "An important feature of this invention is to provide a line controller or guide having an elongate bearing effect and which

(Testimony of Allen E. Hambly.)

is so mounted in the rig that the axis of the free bearing—" I would like to interpose at that point and emphasize the word "free," which, in my opinion, means when the drilling line does not extend through it. That is the only time that it is free. It can't be free if a line extends through it. Continuing to read, "that the axis of the free bearing is substantially coincident or identical with that of the slanting line or cable from the drum 3 so that the line can move in either direction endwise with a minimum of pressure from the controller," that is, to position. "That is, the normal or free and the applied position of the guide is such that no load or pressure, of notice, of the guide is burdened on the line." I believe that is all of that.

Mr. Caughey: Will you read the next paragraph, please?

A. Starting with line 23, "In other words, the invention includes a line controller having a normal or unapplied [463] position such that its elongate bearing means will receive the introduced line 2 substantially free of mutual pressure between the bearing and the line with the result that it is possible to run the line with but little wear on the bearings." My interpretation of the word "normal" in Claim 2 is based on these quoted passages.

Q. And in the light of the drawing? I believe you said that the normal position that the patentee has described is illustrated in the drawings, is it not?

A. Not necessarily.

Q. Well, I think it is.

(Testimony of Allen E. Hambly.)

A. Because the line extends through it and, even if the center of gravity of that spooler was so located with respect to the eye, and that spooler assumed an offset angle position——

Q. That would be a normal position, wouldn't it?

A. That would be its normal position if hung properly.

Q. If it was hung properly, it would have to be, so that the line goes through up to the spooler and spools, without any substantial friction on the bearings——

Mr. Caughey: Are we arguing the case?

Mr. Joseph F. Westall: No. I am asking him if that is not true.

A. May I ask you a question, Mr. Westall, what you mean by "if hung properly"? [464]

Q. If it is hung properly——

A. What can you vary in hanging it?

Q. You vary whatever is in the testimony. It may be a few feet up or any number of feet.

A. If you suspended it?

Q. If you suspended it, so that the line to be spooled will be directed down to the drum.

A. I would like to say this, Mr. Westall, and I am sure it is a correct statement of physical fact, that the normal angular tilt of the axis of the spooler is so that, when you locate that eye with respect to the axis, and when you determine what length the spooler is going to be, at that instant you have determined what its normal suspended position will be and it doesn't matter one bit how

(Testimony of Allen E. Hambly.)

high up you go; you can't cause that to assume a different normal position.

If you brought this line over here, it would tend to hang at that same inclined position until the drilling line—or, when put on the drilling line, it would be straightened up with the line; but you can't change the normal suspended position of that spooler by attaching it at a higher or lower point in the derrick. That is determined by the dimensions of the spooler when it is manufactured.

Mr. Joseph F. Westall: I believe that is all.

Mr. Caughey: That is all. That concludes the defendants' [465] case.

Mr. Joseph F. Westall: I would like to have Mrs. Moss take the stand again.

PHOEBE E. MOSS

one of the plaintiffs, being recalled, testified as follows, in rebuttal:

The Clerk: You are the Phoebe E. Moss who has hertofore been sworn in this case?

A. That is right.

Direct Examination

By Mr. Joseph F. Westall:

Q. Mrs. Moss, there has been some testimony about the use of chains, prior to the invention apparently, in a spooler. Do you know anything about the construction, hanging and mode of operation of such chains? A. Yes.

(Testimony of Phoebe E. Moss.)

Q. Have you ever seen any such chains in use?

A. Yes.

Q. Please state whether or not there was anything resembling a hanging line used with those chains.

A. No; not the ones I saw and I saw a good many, because they didn't require a hanging line.

Q. They were held by weights on the side?

A. That is right, and they were a very light article compared to the present-day spooler. They are a length of [466] chain and they are tied up there, and they were merely to direct that line as well as they could in those days, which was several years ago, and they were not suspended up in the derrick. It wasn't a requirement.

Mr. Joseph F. Westall: You may cross-examine.

Cross-Examination

By Mr. Caughey:

Q. You were present, were you not, when your husband gave his deposition? A. Yes, sir.

Q. You heard him say that safety lines were required in derricks when weights were suspended?

A. Safety lines are required but that is not a suspension line.

Q. What would happen if one of the side bridles of the chain spooler would break?

A. The natural thing. The chain is light and the weights are so much heavier that they would go to the ground by the law of gravity. The chain, then,

(Testimony of Phoebe E. Moss.)

of course, would fly in the air. They can put a safety line on either side and the safety line can be slack; not a suspension line but a safety line to take care of that falling down into the derrick.

Q. There is frequently pipe hung in the well, is there not? [467]

A. What do you mean?

Q. Pipe that is pulled out of the hole, hanging in the well?

A. That frequently happens in an oil well.

Q. Did you ever see a stand of pipe hung on the side of a well?

A. Stood over on the side of the well; yes.

Q. Did you ever see men working up in the derrick? A. Yes, sir.

Q. What would happen if the chain broke and the man was working in the derrick and the thing flopped around to hit him? Would he be injured?

A. Well, when the chain was used, the derrick-man worked too high up to be hit by that chain because it is natural a chain will flop down. The man on the floor could be hit with it if the end dropped down far enough.

The Court: What is the use of speculating whether he could get hit and where?

Mr. Joseph F. Westall: Not very much.

Q. (By Mr. Caughey): Your testimony is that you never saw any safety ropes on a chain spooler? Is that your testimony?

A. I have seen many safety lines. I said no hang-

(Testimony of Phoebe E. Moss.)

ing rope to suspend it up in the derrick. It was not used on the old chain; no. [468]

Q. As far as you saw? A. No.

Mr. Caughey: That is all.

Mr. Joseph F. Westall: Mr. Horan.

B. A. HORAN

recalled as a witness on behalf of the plaintiffs in rebuttal, being heretofore duly sworn, testified further as follows:

The Clerk: You were heretofore sworn?

A. Yes, sir.

Direct Examination

By Mr. Joseph F. Westall:

Q. Mr. Horan, I believe in your testimony heretofore given you stated you had long experience in the oil business, working on derricks and so forth, did you not? A. Yes.

Q. How long did that experience continue?

A. I have been working in the field better than 20 years.

Q. Did you ever have any experience in the use of chains in derricks, such as Mrs. Moss has just referred to?

A. I have; and I have gotten steel in my eye and had it extracted, but it never blinded me.

Q. I will ask you this. Do you know whether they had a hanging line to hang that chain in the derrick at any time? [469]

(Testimony of B. A. Horan.)

A. No, sir; we have never had any hanging line with a chain.

Q. And have you seen many of those chains in use?

A. Yes; I used them years ago. That is all we had.

Q. Can you produce anything to show what those links looked like? A. Yes, sir; I can.

Mr. Joseph F. Westall: I will show this to counsel and the court.

A. They weigh about two pounds apiece.

Q. How large did you say these links are?

A. Three of them would weigh about four pounds, four or five pounds, or something like that. In those days, they made light and heavy rotary chains.

Q. How many links of the chains constituted one of these devices? A. We used three.

Q. And the drilling line was run between——

A. Through the center.

Q. Through the center? A. Yes.

Q. And between two rollers of the chain?

A. Yes.

Q. And any whipping caused a striking of this side piece and the flying of sparks, such as you have described, is [470] that correct?

A. Yes; the rollers wore the line considerably and sparks came out, which was dangerous around gas wells or any well that was about to be brought on production, but they always had a short safety

(Testimony of B. A. Horan.)

line on them which come from the ends to the girt. These were three girts high.

Q. Were those slack lines?

A. Yes; they were slack. It was holding them so that, if that should break your two center rollers, if that should break your chain in two, it wouldn't come down and injure a man. In those days, our drums were very narrow and they didn't have much traveling. In other words, your weights would only be a foot and a half off of the ground and, therefore, the safeties would keep it from hitting a man. But, when your rollers are absolutely gone and your wickers on the line, naturally, it has a chance to pull it up and down.

Mr. Joseph F. Westall: We offer in evidence the illustration, apparently, from the California Oil World, page 2, "Six Reasons Why Jeffrey Chain Side Bars Are Extra Strong," as a plaintiffs' exhibit.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 31 in evidence.

Q. (By Mr. Joseph F. Westall): I show you a photograph, being Defendants' Exhibit H, of a line spooler and ask you to state, assuming that you did not know anything about the Moss [471] spooler, with your experience, if you were directed to install one of those on the derrick, just how you would proceed.

A. May I demonstrate with the derrick there?

Q. Yes.

Mr. Caughey: What is the object of this testi-

(Testimony of B. A. Horan.)

mony? This witness was on the stand and had an opportunity of giving his testimony when he first got on the stand.

Mr. Joseph F. Westall: It is rebuttal to your testimony where you talked so much about degrees and angles.

The Court: Overruled, if there is an objection.

A. Do you want me to explain this?

The Court: You may explain it, how you would proceed to hang it in the derrick.

A. This particular type of spooler was installed for the Bartholomew Oil Corporation.

Q. (By Mr. Joseph F. Westall): I am talking about any of your experience away back there.

A. Yes. Just a minute and I will tell you.

The Court: Try to be as explicit as you can.

A. Yes. These were put on the line first and then clamped.

Q. (By Mr. Joseph F. Westall): And then what was done?

A. It was pulled up to the third girt and the weights put out from the side arms or cable arms, down the side of the derrick. Now, with the type of unit we had in this derrick, [472] of which there are variations in units—and what I mean by units is draw-works—there is what we call a 50, 75 and 125, which means it has to be brought into the derrick more, one for your driving line and above it is a sand line. That has to be brought inside of your derrick. This is pulled up. There is a variation——

(Testimony of B. A. Horan.)

The Court: Which is pulled up?

A. This spooler is pulled up to your third girt. This hanging line goes up until it hangs freely but this particular spooler couldn't hang the proper way for the simple reason the hanger is in the middle. This eye here, when it is hung, has a tendency to ride on top and on the bottom and wear your core liners or rubbers.

The Court: Out?

A. It was continuously putting in repairs. You will find new lines when they come out are manufactured and they are greased. If a line has been laying out and washed dry, we usually oil it. That is customary for any driller to do. So as far as the angle is concerned, one unit might be in the rig further and a different base rig and a different height rig. It is from the point where it is hung three girts high. If a unit that is in close—you might not have to hang it as high as required for the simple reason of the variation of your unit in the rig to make it hang. And as far as the safety line is concerned, our State laws require it. [473] In other words, it is a good policy for the workmen and you couldn't put—well, this is just one way to hang that spooler as far as weights are concerned. There are two different other ways, which are identical.

The Court: Of which spooler are you talking?

A. The top spooler, this one here. And we used to hang the chains in those days by a triangle with the weight outside and another one, with the tri-

(Testimony of B. A. Horan.)

angle, with the spring on it. But a spooler will never suspend in the air unless it has got a hanging line on it and that hanging line, when it hangs properly, is the top. You couldn't put enough weight on those weights there to hold that spooler up, not at the speed it travels in the hole or out of the hole.

Q. (By Mr. Joseph F. Westall): Let me ask you this question. In installing a spooler like that, would you have any kind of a protractor and carefully measure angles down there or would you use your common sense in hanging it?

A. You don't go to that particular trouble because we are not well educated like that. We hang it the best way where the operator can get the efficiency of that spooler. You can hang it, sure, two girts high. And, if your Honor is to see the thing, you have to drag this and wear your rubbers out. And why wear them out because there is no more line on it? To get results is to put it where it belongs. As far as angles are concerned, the angle comes from that point to be hung normally [474] or freely. When that is unhooked, you can hook it up together.

Q. You were present when Mr. Prehoda testified the other day, were you not? A. Yes.

Q. And I believe that he said he was connected with the Santa Fe Drilling Company and I believe he spoke of the hanging of a spooler in a derrick at one of those wells. Do you know anything about that?

(Testimony of B. A. Horan.)

A. Why, yes. This particular spooler I had seen is a Patterson-Ballagh spooler. It was a four-rubber or four-section and it had the triangle affair instead of weights. Of course, it has weights which go outside of the derrick but it is still suspended with the hanging line from the top.

Q. I believe that Mr. Prehoda said that one of those wells didn't have suspension. Is that correct?

A. That is what he said.

Mr. Caughey: I don't recall any such testimony. What was that statement?

Mr. Joseph F. Westall: He testified that on one well they didn't have any hanging line and we wanted to show that it would stay in position without a hanging line. I am asking him about what he saw at one of the wells that Prehoda had charge of.

A. This here particular one had a hanging line on it. [475]

Q. It had a hanging line at the top?

A. Absolutely.

Q. And what was that hanging line for?

A. To hang and hold the spooler up.

Q. And to keep it in balanced position?

A. Absolutely.

Q. If you let the hanging line go, it wouldn't stay balanced? A. No.

Mr. Joseph F. Westall: I believe that is all.

(Testimony of B. A. Horan.)

Cross-Examination

By Mr. Caughey:

Q. Mr. Horan, you have worked under a number of different superintendents, haven't you, in the oil fields? A. Yes.

Q. And isn't it a fact that one superintendent will use a structure in one manner and another superintendent will use it in another manner?

A. Due to the fact that the superintendent is very seldom around——

Q. Let's use the driller, then. Isn't it a fact that one driller will use equipment in one manner and another driller will use it in a different manner?

A. What manner do you mean?

Q. I am asking you that question. [476]

A. Just what, for instance?

Q. Well, in the equipment that you use in the oil fields, isn't it a fact that in handling equipment or placing equipment one driller will handle it or place it differently than another?

A. It all depends what kind of equipment and what type of equipment.

Q. Isn't it a fact that you have seen equipment in the field that one superintendent would use differently than another and place differently in the well, the same equipment?

A. The same equipment?

Q. Yes.

A. No; there is only one place to put it.

Q. You don't agree with that?

(Testimony of B. A. Horan.)

A. No; I don't.

Q. You don't agree that a driller, when he gets equipment in the field, will do with it according to his own whims?

A. No. There is a certain place to put that equipment.

Q. That may be so. A. Absolutely.

Q. You were not on these Union Oil wells up at Belridge, were you? [477] A. No.

Q. And you don't know whether Mr. Reed wanted to be safer than usual and had two lines instead of one on a chain spooler?

Mr. Joseph F. Westall: That is objected to as not proper cross-examination.

The Court: That is asking for a conclusion.

A. That is the safety lines Mr. Reed was talking about, was it?

Q. (By Mr. Caughey): Yes.

A. Yes; the safety lines, as I explained, are safety lines but they are not hung—if it should part, it wouldn't injure anybody.

Q. But wouldn't it make it more safe if you had another line up to the top and had two safety lines? A. No.

Mr. Joseph F. Westall: Are you talking about the chains now?

A. Are you speaking of the chains?

Mr. Caughey: Yes.

Q. Why not?

A. Because it is not required; for the simple reason it is light——

(Testimony of B. A. Horan.)

Q. I am not asking whether it is required. Wouldn't it be safer to have two lines than [478] one?

A. No.

Q. You don't think so?

A. No. They are safety lines.

Q. Supposing the lower safety line broke and the chain broke and you had an upper line hanging there, wouldn't that suspend it?

A. If one safety line broke—and it isn't broke. It is there tied tight.

Q. I am asking you to assume you had a lower safety line that was broken for some reason, and assume that the chain broke, and if you had another upper safety line, it would keep it suspended, wouldn't it?

A. Are you speaking of a suspending line?

Q. Yes.

A. There is no suspending line on them.

Q. I am saying if that was a fact, wouldn't that upper line suspended it?

A. I have never seen it.

Q. I am not asking you that. I am asking you if it would do it?

The Court: What difference does it make——

Mr. Caughey: Because he didn't see them, doesn't mean they weren't there.

The Court: ——asking him for his opinion about various matters in relation to it? What difference does it make? [479]

Mr. Caughey: Evidently, he was brought here

(Testimony of B. A. Horan.)

because he knows something about oil well drilling and rigs.

The Court: Go ahead.

Q. (By Mr. Caughey): You can answer that question, can't you?

A. I have never seen any with such lines.

Q. I didn't ask you that. I asked you, with the facts I have stated, wouldn't the upper line suspend——

A. No.

Q. Why not?

A. Because it would fall down.

Q. If it was attached up in the girt here, why wouldn't it suspend it?

A. It would only go so far.

Q. That is the best answer you can give, is it?

A. Because it has never been used. That is the reason why. I have never seen one.

Q. I didn't ask you that question, sir.

Mr. Joseph F. Westall: He is just called upon to speculate.

Q. (By Mr. Caughey): It may be, Mr. Horan, you haven't had an opportunity to have education like some of us but you have been in the oil fields and are a practical oil man, aren't you?

A. Yes. [480]

Q. And, as a practical oil man, you would know that, if you had an eye in the middle on a spooler and you had an eye at the top, it would be better to hang it at the top? You would know that, wouldn't you?

(Testimony of B. A. Horan.)

A. It is the most practical place, on top.

Q. And you would know that, wouldn't you?

A. Yes; for the simple reason of the efficiency of your spooler.

Mr. Caughey: That is all.

Redirect Examination

By Mr. Joseph F. Westall:

Q. And would you have known that prior to the Moss invention? A. No.

Recross-Examination

By Mr. Caughey:

Q. You say you wouldn't have known, prior to the Moss invention, that hanging a weight from the top would cause it to assume an angle of inclination?

A. I would, of my own knowledge, but I have never seen one.

Q. I didn't ask you that. Wait. You would know of your own knowledge if you hadn't seen one, wouldn't you?

A. But I didn't know until Moss invented it.

Q. That isn't an answer to my question. [481]

Mr. Joseph F. Westall: He has answered that he didn't know until Moss made his invention.

The Court: What is the answer?

A. What are you talking about now? What is your last question?

Q. (By Mr. Caughey): My last question, from

(Testimony of B. A. Horan.)

the knowledge you have in the oil fields, regardless of whether you saw a Moss spooler, if the problem was put up to you to hang something in a well, you would know it would be better to hang a wire line rope from the top, wouldn't you?

A. Would I know?

Q. Yes; as a practical oil man.

A. If there is an eye there, yes; if there is no eye there, it would be in the middle.

Mr. Caughey: That is all.

Mr. Joseph F. Westall: I have one more witness.

The Court: I think we will suspend at this time.

Mr. Caughey: May I ask Mr. Westall how long is the witness going to be?

Mr. Joseph F. Westall: Oh, about 10 minutes.

Mr. Caughey: Does your Honor desire to hear any oral statements?

The Court: I think I do. I would like to have an outline of the issues here orally and some argument, and then I think I will want something in writing also, some authorities, [482] following your arguments.

Mr. Joseph F. Westall: Yes, your Honor.

(Thereupon, a recess was taken until 2:00 o'clock p.m.) [483]

Los Angeles, California, Friday, February 20, 1948,
2:00 P.M.

(Same appearances.)

Mr. Joseph F. Westall: If the Court please, I am going to turn the matter over to my associate counsel, who is my son, and I would like to briefly testify, with your Honor's permission.

JOSEPH F. WESTALL

called as a witness on behalf of the plaintiffs, in rebuttal, being first duly sworn, testified as follows:

Direct Examination

By Mr. Edward F. Westall:

Q. You are one of the attorneys for the plaintiffs in this action, are you not? A. I am.

The Court: Let's get the name in the record.

The Clerk: State your name, please.

The Witness: Joseph F. Westall.

Q. (By Mr. Edward F. Westall): You are one of the attorneys in the action? A. I am.

Q. When were you employed as attorney for the plaintiffs in this case?

A. I was employed, refreshing my recollection by our bills, on or about maybe a day or so before February 8, 1946. [484]

Q. The original complaint in this action was filed July 18, 1946. Will you please state why you waited from the time of your employment, February 8, 1946, until July 18, 1946, before filing the original complaint?

(Testimony of Joseph F. Westall.)

A. Immediately after I was employed to prepare a complaint, I was told by my client that Patterson-Ballagh had repeatedly stated that they wished to settle the case.

Mr. Caughey: That is objected to as calling for hearsay testimony, if your Honor please.

A. No. That is only explaining what I did.

The Court: That is hearsay.

Q. (By Mr. Edward F. Westall): Did you have any——

A. Wait a minute. I immediately telephoned to Mr. Caughey. I explained to Mr. Caughey over the phone many times, and I know his voice—I called his office and, after some delay, I got him on the phone and told him we were getting ready to file a complaint, or we had a complaint filed at that time or ready to file, and then, he says, “Well, don’t file the complaint because we will settle,” he says. And he told me that they would settle. After that, every week or so, I would telephone Mr. Caughey and ask him whether he had—or his client would meet us, telling him we would be glad to come to his office at any time and discuss the matter of settlement, and explaining to him also that my client didn’t have very much money, and I wanted to save the [485] expense of this suit if I possibly could. And Mr. Caughey on each of these instances, which was for a number of weeks, every week or so, up until shortly before the pre-trial, constantly would tell me they would settle, and I said, “If we don’t come to some arrangement, we will file the suit.” And just before I did file the suit, on July

(Testimony of Joseph F. Westall.)

18th, becoming impatient, I called up and told Mr. Caughey that we had the complaint and we must file it because the statute of limitations was running against some of our claim of infringement six years before. Then he said, "Well, you might just as well file it because, after you file it, I believe we can get the parties together and settle it. Maybe that is the only way we can get Mr. Ballagh to come down, because he is a very busy man and travels around a great deal, and I haven't been able to get him and arrange a meeting in the office."

Q. Because of the statements that Mr. Caughey made, you delayed filing the complaint until July 18, 1946, did you?

A. That is correct. That was the sole reason that I did file, because I didn't want to involve my clients in litigation, knowing their financial circumstances.

Q. Did you have any conversation with Mr. Caughey after the filing of the complaint?

A. Yes; I had repeated conferences.

Mr. Caughey: That is objected to as immaterial, after [486] the time of the filing of the complaint, may your Honor please. There might have been some question involving laches but any conversations afterwards, even if they were conversations relative to a settlement, are, obviously, not material.

Mr. Edward F. Westall: I believe they are very important as pertaining to the question of alleged prior use. Up to the time of the pre-trial, there

(Testimony of Joseph F. Westall.)

was no question of any prior use. It was contemplated the action would be settled, apparently, by both sides. These conversations which took place after that time and up to the pre-trial relate to the lack of any defense that was even remotely suggestive of that, and we believe that any alleged prior use was largely a figment of the imagination, and these conversations are at least circumstantial evidence pointing to that fact.

The Court: As I understand, these conversations were between counsel. Do you think that is competent evidence?

Mr. Edward F. Westall: Of course, Mr. Caughey at that time had been employed for a long time and these conversations concerning which the witness will testify occurred in February, I believe, 1947. The complaint was filed in July of the previous year. So counsel was in a position to know his client's case.

The Court: What happened after the complaint was filed I don't think would have any bearing in this matter. Do you?

A. I would like to testify—— [487]

Mr. Caughey: I certainly object, may your Honor please. Your Honor knows very well that frequently counsel settle cases on a nuisance basis. That has nothing to do with the negotiations for a settlement. On that basis or any other basis it is not competent evidence.

A. I do want to testify to this——

Mr. Caughey: I object to your testifying, Mr.

(Testimony of Joseph F. Westall.)

Westall, and I ask a ruling from your Honor before he starts.

A. That is something else.

Mr. Caughey: You are volunteering an answer and you have no right to do so. You are a witness.

A. But there is something I would like to answer.

The Court: Let's dispose of this particular matter first. I don't think it is competent for the witness to testify as to negotiations relating to a settlement after the complaint was filed, that is to say, in relation to the matters that you have brought to the attention of the court. You claim something was said about prior use or something of that kind. I will sustain that objection.

A. Now, if the court please, at no time——

The Court: Just a moment. Do you want to consult with counsel there and see what he should inquire about? A. I will do that.

(Conference between counsel for the plaintiffs.)

Q. (By Mr. Edward F. Westall): Was there any suggestion [488] during any conference or telephone calls which you had at any time prior to the time of the filing of the complaint regarding defenses such as prior use or any patents or prior publications that allegedly disclosed——

Mr. Caughey: That is objected to as immaterial. It doesn't go to the question of laches. It is solely a question of defenses that some party might have

(Testimony of Joseph F. Westall.)

and it is absolutely immaterial whether we did or did not have defenses which we mentioned or did not mention. If they are talking about laches, that is something else, but, when they begin talking about defenses, that is another question entirely.

The Court: What is your offer of proof? To what are you alluding? Are you trying to point out a statement, by defendants' counsel, prior to the filing of the suit, or what is your purpose?

Mr. Edward F. Westall: It is not only counsel but the defendant himself; and, if he had any defenses, it would seem reasonable he would have said so.

Mr. Caughey: That is conjecture.

Mr. Edward F. Westall: It is just a circumstance which has a bearing upon the evidence, on the credibility of the evidence.

The Court: That is, you claim that Mr. Caughey made representations to you in relation to defenses?

Mr. Edward F. Westall: That is right. [489]

The Court: Or to Mr. Westall, Sr.?

Mr. Edward F. Westall: That, and the complete absence of any defenses.

Mr. Caughey: Am I expected to tell my defenses in the case beforehand?

The Court: Suppose he had told him there was no defense, what bearing would that have on the case if, in fact, there are defenses, legal defenses?

Mr. Edward F. Westall: It would seem it would be an indication that the parties would get together and would settle the case or at least there would be

(Testimony of Joseph F. Westall.)

some reason for discussion over a period of as many years as have elapsed between the time when they first became acquainted with the Moss patent, after Mr. Moss went to them and discussed it with them; and then, considering the length of time from when they received that first advice that Mr. Moss intended to sue, until the time of suit, there was no suggestion of any defense at all. On the contrary, there is already evidence in the case that they contemplated settlement or at least negotiations leading to a settlement, without any suggestion of any prior use or anything of that kind, which they now contend they had all the time. It is a circumstance.

The Court: Isn't it a general rule that negotiations for a settlement are not material, that is, it is not usually permitted? [490]

Mr. Edward F. Westall: I think there is a general rule of that kind but——

The Court: If the conversation had been between Mr. Moss and Mr. Caughey, it is possible that he would have been permitted to have testified, although I am not sure about that. I don't think that negotiations and conversations had between counsel necessarily bind the client.

Mr. Edward F. Westall: Do I understand your Honor's ruling is that the objection is sustained?

The Court: Will you repeat the question, please?

Mr. Edward F. Westall: "Did you have any conversations pertaining to any alleged prior uses, with Mr. Caughey, prior to the filing of the complaint, as

(Testimony of Joseph F. Westall.)

to any alleged defenses of prior use or printed publications or patents or the like?"

Mr. Caughey: The same objection.

The Court: I will sustain that objection. I don't think it is material to this issue. We have the evidence here of just what happened in relation to all of those things.

Q. (By Mr. Edward F. Westall): Is the contract of employment of Westall & Westall, to institute and maintain this action, in writing?

A. Yes, sir.

Q. Will you produce that contract?

A. I have the original.

Mr. Caughey: That is objected to as immaterial. I will [491] accept the statement of Mr. Westall that he was approached, on a certain date, by Mr. Moss and waited until that time for the reasons given. And I would like a chance to reply to that but there is no need of putting the contract of employment in evidence.

Mr. Edward F. Westall: The contract of employment is offered to form a basis for a statement of charges against Mr. Moss, to support our prayer for the allowance of attorneys' fees. There should be some evidence of it, we believe, in regard to what reasonable attorneys' fees would be.

Mr. Caughey: I am sure, when and if there is a judgment here, if the plaintiffs prevail, the court will give you ample opportunity to do that.

The Court: That is a statutory provision, is it not, providing for attorneys' fees, by statute?

(Testimony of Joseph F. Westall.)

Mr. Edward F. Westall: Yes.

The Court: And you don't need a stipulation. Counsels' names appear as attorneys for the plaintiffs in this case. So in that respect there is no question about that. And, if the plaintiffs should prevail, the matter of attorneys' fees will be considered the same as the question of what damages might be allowed to the plaintiffs. That evidence will be timely then.

A. If the court please, may I step down just a moment?

The Court: Yes. Is there anything further?

Mr. Joseph F. Westall: There won't be after this. The statute provides that a reasonable attorneys' fee may be allowed at the time of the entry of judgment, and at the time your Honor directs the judgment, you should allow a reasonable attorneys' fee, and, in order to find out what that reasonable attorneys' fee is, there are two ways to do it. We show our contract with Mr. Moss, show the reasonableness of the charge and show our charges. So this is now an application, as part of the relief, that we at this time be allowed to present figures, or we can present it later if your Honor wishes.

The Court: What I shall do is this. When this matter is concluded this afternoon, I shall set the matter ahead for further testimony, argument or submission or further proceedings, and, if at that time there has been a determination that the plaintiffs prevail, then we will go into the matter of at-

torneys' fees and the matter of damages and other matters.

Mr. Caughey: That matter of attorney's fees works both ways, your Honor, so far as the prevailing party is concerned.

Mr. Joseph F. Westall: That is true.

The Court: Then, it will work both ways. It will apply in both cases if that is a correct version of the statute.

Mr. Joseph F. Westall: That is correct. That is all for the present except the argument.

Mr. Caughey: Inasmuch as I am here alone, may I be sworn [493] to reply, briefly, to what Mr. Westall stated on the stand?

The Court: Yes.

Mr. Caughey: I think I should have that privilege.

REGINALD E. CAUGHEY

called as a witness on behalf of the defendants, in rebuttal, being first duly sworn, testified as follows:

Mr. Joseph F. Westall: If this matter is to be continued, why does counsel want to testify now?

Mr. Caughey: I am replying to the statements Mr. Westall made about the telephone conversations.

The Court: I want you gentlemen to know I am going to decide this case on the evidence of the litigants here, as to the merits of the case, rather than any dispute between counsel. I must properly consider some phase here relative to the question of laches, if that is what is involved, but, other

(Testimony of Reginald E. Caughey.)

than that, I don't see any particular need of going into any discussion of a conference between counsel.

The Clerk: What is your name, please?

A. Mr. R. E. Caughey. Mr. Westall did call me on the telephone some period of time before the complaint was filed and indicated that he was going to file a complaint. At that time I told him that there had been some discussion of settlement in the past but that Mr. Ballagh, of the Patterson-Ballagh Corporation, was not disposed to make any settlement except on a nuisance basis, but that he would contact him [494] again and find out. And I say this; Mr. Westall either called me or I called him and I told him that that was the only kind of a settlement we would make, would be on some nuisance basis, where it would be disposed of as far as the costs of litigation or something like that, and that was the extent of the conversation. That is all.

Mr. Joseph F. Westall: May I rebut that, very briefly, after he gets through?

The Court: Will this be the finish?

Mr. Edward F. Westall: Yes.

Mr. Joseph F. Westall: And perhaps I can state it here, being under oath. Mr. Caughey never used the word "nuisance" at all at any time during the conversation. He only said that he would get together and settle.

The Court: All right; that is the end of this line of testimony. Is there anything further on either side?

Mr. Joseph F. Westall: No further testimony.

Mr. Caughey: No, your Honor.

The Court: I would like to have both sides give me as clear-cut a definition, as you can, in as short a time as you can, of the issues in this case for me to consider and the questions of law we can reserve for your treatment in a brief, which I am going to ask you to file. [495]

* * *

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 1st day of April, A.D. 1948.

/s/ ROSS REYNOLDS,

Official Reporter.

[Endorsed]: Filed May 29, 1948.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 141, inclusive, contain the original Substituted, Amended and Supplemental Complaint, etc., filed August 21, 1946; Answer; Stipulation and Order for filing Substituted, Amended and Supplemental Complaint; Substituted, Amended and Supplemental Complaint filed Oct. 6, 1947; Answer to the Substituted, Amended and Supplemental Complaint; Stipulation as to use of Copies of Patents; Substituted, Amended and Supplemental Complaint filed Feb. 4, 1948; Defendants' Answer to Substituted, Amended and Supplemental Complaint; Order of the Court Recording Proceedings on Pre-Trial February 3, 1948; Opinion; Plaintiffs' Proposed Findings of Fact and Conclusions of Law; Objections to Proposed Findings and Conclusions; Plaintiffs' Proposed Findings of Fact and Conclusion of Law Lodged Sept. 18, 1950; Defendants' Proposed Findings and Conclusions in Accordance with the Court's Request; Memorandum on Objections to Findings and Conclusions; Findings of Fact and Conclusions of Law; Judgment; Notice and Motion to Amend Judgment; Order on Motion to Amend Judgment; Amended Interlocutory Judgment; Notice of Appeal; Order Under Rule 73(g); Designa-

tion of Record on Appeal and Stipulation and Order Extending Time to Docket Appeal which, together with Depositions of Perry M. Moss and James C. Ballagh, Copy of Reporter's Transcript of Proceedings on February 17, 18, 19 and 20, 1948, and original plaintiffs' exhibits 1, 1-A, 2 to 9, inclusive, 10A to 10N, inclusive, 11 to 16, inclusive, 16A, 17, 19, 19A, 20 to 28, inclusive, 30 and 31 and original defendants' exhibits A to Q, inclusive, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 7th day of February, A.D. 1951.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12849. United States Court of Appeals for the Ninth Circuit. Patterson-Ballagh Corporation, a Corporation, and Byron Jackson Co., a Corporation, Appellants. Perry M. Moss and Phoebe E. Moss, Appellees. Transcript of Record. Appeal for the United States District Court for the Southern District of California, Central Division.

Filed February 9, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 12849 .

PATTERSON-BALLAGH CORPORATION, a
California Corporation, and BYRON JACK-
SON CO., a Delaware Corporation,

Defendants-Appellants,

vs.

PHOEBE E. MOSS and PERRY M. MOSS,

Plaintiffs-Appellees.

CONCISE STATEMENT OF POINTS
UNDER RULE 19(6)

Now come the appellants, by their attorneys, and in accordance with the provisions of Rule 19(6) of this Court submit the following as a concise statement of points on which they intend to rely:

1. The District Court erred in paragraph II of its Amended Interlocutory Judgment and in paragraph 5 of its Conclusions of Law in holding that claims 2 and 7 of patent 2,190,880 are good and valid in law.

2. The District Court erred in paragraph III of its Amended Interlocutory Judgment and in paragraph IX of its Findings of Fact in holding that the defendants infringed claim 2 of patent 2,190,880 by manufacturing and selling wire line guides or spoolers as shown in plaintiffs' exhibit 10-e, page 1948 thereof.

3. The District Court erred in paragraph III of its Amended Interlocutory Judgment and in paragraph IX of its Findings of Fact in holding that the defendants infringed claim 2 of patent 2,190,880 by selling wire line guides or spoolers with the knowledge and intent that the purchasers and users thereof would hang the same so as to perform the function specified in said claim 2.

4. The District Court erred in its Opinion dated February 21, 1950, in interpreting the word "substantially" in claim 2 of patent 2,190,880 so as to include the angle of inclination assumed by defendants' two-section, four-section and six-section wire line guides.

5. The District Court erred in failing to hold that, to one skilled in the art to which the patent in suit pertains and to a practical man in the oil fields, it was obvious to suspend a wire line guide from an eye eccentric to its axis and adjacent the top of the guide for the purpose of minimizing friction between the wire line guide and the wire line threaded through the same.

6. The District Court erred in failing to hold that the Reserve Oil Company, subsequent to purchasing wire line guides from Patterson-Ballagh Corporation on July 15, 1936, hung one of said wire line guides in an oil well derrick and with the wire line guide suspended by hanging lines as shown in defendants' exhibit K, a photograph taken by J. C. Ballagh on August 5, 1936.

7. The District Court erred in its Opinion dated February 21, 1950, in holding that the length of the hanging line affected the angle of inclination of defendants' wire line guides or the wire line guide of claim 2 in suit.

8. The District Court erred in holding in its Finding of Fact VIII that device or devices manufactured, sold or used by others prior to the date of invention by Perry M. Moss did not include the subject matters of claims 2 and 7.

9. The District Court erred in assuming in its Opinion dated February 21, 1950, without supporting evidence, that suggestions to Patterson-Ballagh Corporation to hang its wire line guides from an eye at the top of the spooler originated from those who had seen or heard of the Moss wire line guide as covered by claim 2.

10. The District Court erred in holding in its Opinion dated February 21, 1950, that the patentee Moss was diligent in reducing the invention of claims 2 and 7 to practice.

11. The District Court erred in holding in its Opinion dated February 21, 1950, that the patentee Moss reduced the invention of claims 2 and 7 to practice in November, 1936.

12. The District Court erred in failing to hold that the patentee Moss was restricted to the date of April 5, 1937, as the date of invention of claims 2 and 7 of the patent in suit.

13. The District Court erred in failing to hold that Smith patent 2,211,299, defendants' exhibit E, has a date of invention as to the disclosure therein of January 4, 1937, and that said date of disclosure is prior to the date of invention of the patent in suit and discloses in part hanging lines attached to the top of the wire line guide which function to support the wire line guide and to cause the same to hang substantially without load of the wire line guide on the wire line threaded through it.

14. The District Court erred in failing to hold that John E. Reed, an employee of the Union Oil Company, caused to be manufactured and used a wire line guide in the early part of 1936 in an oil derrick on Belridge No. 20 well of the Union Oil Company and that said wire line guide was suspended by hanging lines as shown in defendants' exhibit B, which hanging lines functioned to support the wire line guide and to cause the same to hang substantially without load of the wire line guide on the wire line threaded through it.

15. The District Court erred in failing to hold that the patent in suit was invalid as to claims 2 and 7 thereof because the patentee Moss did not comply with the provisions of § 33 of Title 35 of the United States Code as to sufficiency of the disclosure in the specifications and as to definiteness of the claims in issue.

16. The District Court erred in failing to hold claims 2 and 7 of the patent in suit invalid and claim 2 not infringed.

17. The District Court erred in paragraph VII of its Judgment in reserving the issues of wilful infringement and attorneys' fees.

Dated this 20th day of February, 1951.

LYON & LYON,

/s/ REGINALD E. CAUGHEY,

/s/ LEONARD S. LYON, JR.,

Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1951.

[Title of Court of Appeals and Cause.]

APPELLANTS' DESIGNATION OF PRINTED
RECORD ON APPEAL

Now come the appellants in the above-entitled appeal and designate the following portions of the record on appeal material to a consideration of the appeal and to constitute the printed record on appeal, pursuant to Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit:

1. Substituted Amended and Supplemental Complaint (Last before trial);
2. Defendants' Answer to Substituted Amended and Supplemental Complaint (Last before trial);
3. Stipulation as to use of copies of patents, dated September 16, 1947;

4. Opinion of Court, filed February 21, 1950;
5. Findings of Fact and Conclusions of Law proposed by plaintiffs, first filed February 28, 1950; rewritten and filed April 28, 1950;
6. Defendants' Objections to Findings and Conclusions proposed by plaintiffs, filed March 6, 1950;
7. Court's Memorandum on Objections to Findings and Conclusions, dated September 15, 1950;
8. Findings of Fact and Conclusions of Law made by Court and dated September 15, 1950;
9. Judgment of Court dated September 15, 1950, and filed September 18, 1950;
10. Amended Interlocutory Judgment dated October 13, 1950, and filed October 16, 1950;
11. Notice of Appeal dated November 14, 1950;
12. Order Extending Time to Docket Appeal, dated December 21, 1950;
13. Stipulation and Order Extending Time to Docket Appeal, dated January 25, 1950;
14. The following portions of the reporter's transcript of evidence:

* * *

15. The following plaintiffs' and defendants' documentary exhibits shall be included in a Book of Exhibits, ten copies of which shall be printed:

Plaintiffs' Exhibits:

1, 2, 6, 7, 8, 9, 10-e (page 1948 thereof), 13, 14, 15, 16 (page of May 16, 1936), 17, 19, 20, 24, 25, 26, 30 and 31.

Defendants' Exhibits:

A (pages 134 and 135), B, C, D, E, F, G, H, I, J, K, L, M, O, P and Q.

16. Concise Statement of Points under Rule 19(6) ;

17. This designation.

18. The following exhibits, which are to be considered as physical exhibits, are material to the appeal:

Plaintiffs Exhibits:

3, 4, 5, 10-a to 10-n with the exception of 10-e, 11, 12, 21, 22, 23, 27 and 28.

(Note: Plaintiffs' exhibits 18 and 29 were withdrawn from evidence.)

Defendants' Exhibit:

N.

Dated this 20th day of February, 1951.

LYON & LYON,

/s/ REGINALD E. CAUGHEY,

/s/ LEONARD S. LYON, JR.,
Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1951.

